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ABSTRACT

An analysis of the relationship between federal, state, and local policies, procedures, and documents governing the implementation of special programs for the handicapped was commissioned by the Montgomery County Public Schools (MCPS) Department of Educational Accountability in the summer of 1979. The purpose of this analysis was to determine whether existing MCPS documents are consistent with federal and state documents, sufficiently comprehensive, or excessive in relation to the documents at the federal and state levels. The adequacy of the procedures for compiling these documents was also examined to determine whether or not they were readily available to parents and staff. The analysis examined available documentation, including relevant MCPS policies and procedures, administrative directives, Access to Continuum Education Services (ACES), federal and state legal documents, relevant materials published by the Maryland State Department of Education, and personal correspondence involving legal clarifications or interpretations requested by local school districts. The analysis showed that generally MCPS documents are consistent with federal and state legislation, do not exceed federal and state requirements, and meet the criteria of comprehensiveness. However, in some specific areas, shortcomings were identified. In addition, the analysis showed that the present system for compiling policies is inadequate. (Author/BW)

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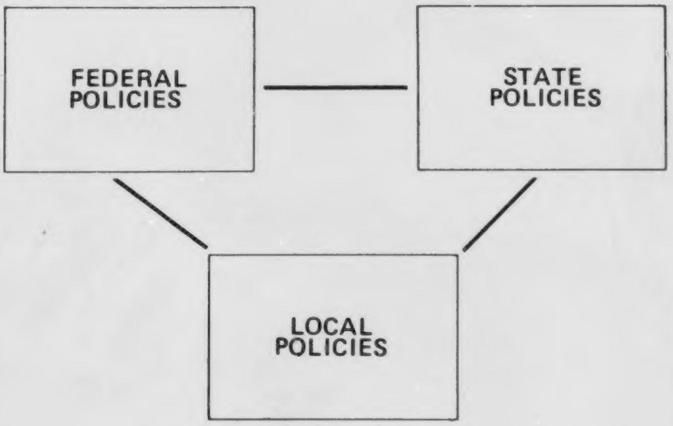
A COMPARISON OF FEDERAL, STATE AND LOCAL POLICIES AFFECTING EDUCATION OF THE HANDICAPPED IN MONTGOMERY COUNTY PUBLIC SCHOOLS



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DEPARTMENT OF EDUCATIONAL ACCOUNTABILITY

EDWARD ANDREWS, Superintendent of Schools
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JOY FRECHTLING, Director, *Division of Program Monitoring*

A COMPARISON OF FEDERAL, STATE AND LOCAL POLICIES AFFECTING THE EDUCATION OF HANDICAPPED CHILDREN IN MONTGOMERY COUNTY PUBLIC SCHOOLS

By

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May, 1980

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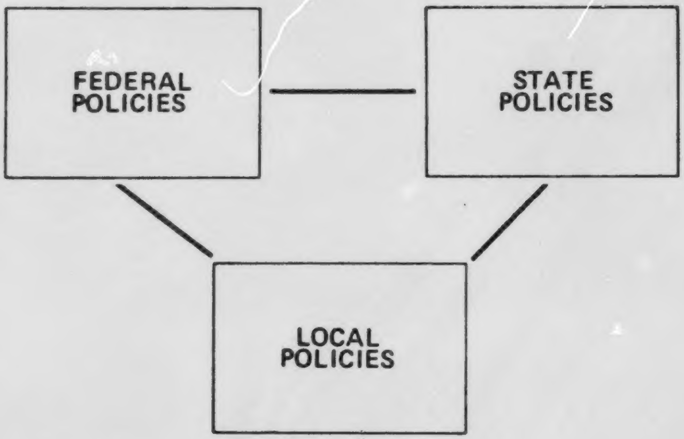
A COMPARISON OF FEDERAL, STATE AND LOCAL POLICIES AFFECTING EDUCATION OF THE HANDICAPPED IN MONTGOMERY COUNTY PUBLIC SCHOOLS


FEDERAL POLICIES
STATE POLICIES
LOCAL POLICIES

Executive Summary

DEPARTMENT OF EDUCATIONAL ACCOUNTABILITY

EDWARD ANDREWS, Superintendent of Schools
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JOY FRECHTLING, Director, *Division of Program Monitoring*

EXECUTIVE SUMMARY

An analysis of the relationship between federal, state, and local policies, procedures, and documents governing the implementation of special programs for the handicapped was commissioned by the Department of Educational Accountability in the summer of 1979. The purpose of this analysis was to determine whether existing Montgomery County Public Schools (MCPS) documents are consistent with federal and state documents, sufficiently comprehensive, or excessive in relation to the documents at the federal and state levels.* The adequacy of the procedures for compiling these documents was also examined to determine whether or not they were readily available to parents and staff.

The analysis examined available documentation, including relevant MCPS policies and procedures, administrative directives, Access to Continuum Education Services (ACES), federal and state legal documents, relevant materials published by the Maryland State Department of Education, and personal correspondence involving legal clarifications or interpretations requested by local school districts.

The legal analysis discussed here was prepared by Mr. Robert Silverstein, a principal attorney with the Washington, D. C. based law firm of Long and Silverstein, P.C., which currently specializes in matters relating to education, children, and handicapped persons.

Limitations of the Present Report

Two limitations must be kept in mind in examining the findings presented here. First, the analysis examined only written documents--policies, procedures, regulations, and directives--concerning the provision of special education services. No attempt was made to verify the match between written policy and actual practice. Such information about practices is presently being gathered in the evaluation of services for handicapped students being conducted by Stanley E. Portny and Associates, Inc., and will be available in September, 1980.

Second, the analyses included only those documents which had been approved in their final form by February 1, 1980. The Office of Continuum Education is currently in the process of developing additional policies and procedures. The degree to which these documents may address the issues raised here cannot be determined at this time.

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*For purpose of this paper, "consistent" means the adoption of policies by Montgomery County Public Schools (MCPS) that are substantially comparable to standards adopted by the Department of Health, Education, and Welfare (HEW) and the Maryland State Department of Education (MSDE); "sufficiently comprehensive" means that at a minimum MCPS adopts or incorporates by reference all of the standards set out in the federal and state legal frameworks; and "excessive" means more than that which is required in the federal and state legal framework.

Findings

The analysis showed that generally MCPS documents are consistent with federal and state legislation, do not exceed federal and state requirements, and meet the criteria of comprehensiveness. However, in some specific areas, shortcomings were identified which place MCPS in a position of possible noncompliance. In addition, the analysis showed that the present system for compiling policies is inadequate. The major shortcomings and inadequacies are summarized in the sections that follow.

Consistency

The analysis indicates that major questions of consistency exist in two areas: transportation and the provision of extended school-year programming. In these two areas it is possible that MCPS could be out of compliance with the federal legislation.

Transportation

The analysis points out that MCPS regulation regarding transportation is inconsistent with federal mandates pertaining to transportation of handicapped children to private residential programs. First, problems are posed by the number of trips for which reimbursement is provided. Second, to the extent MCPS' policy is construed as requiring that the parents of handicapped children make their own arrangements for transporting their children, it is inconsistent with federal policy.

Extended School Year Programming

The HEW Office for Civil Rights has stated that school districts must provide services beyond the 180 day school year for certain children (e.g., severely mentally impaired students) if the extended programming is essential to meet the individual needs of a particular child and the need has been established by appropriate evaluation methods. The MSDE has issued a policy that indicates 12-month programming is not required. To the extent MCPS policy, consistent with state policy, categorically prohibits extended school year programming, the policy is inconsistent with HEW/OCR policy.

Comprehensiveness

The analysis found MCPS documents to be sufficiently comprehensive with some exceptions. These exceptions are in the area of individual educational programs (IEP), evaluation and placement, and related services.

Individual Educational Programs

The state and federal laws provide for an annual review of the IEP and specify the issues which at a minimum must be addressed. No mention is made of any of this in MCPS procedures. Additionally, while MCPS states the IEP must be in effect before services are provided, it does not state when the IEP must be implemented. The state indicates that the IEP must be implemented within 30 days after the IEP meeting; and the federal laws says immediately, except in unusual situations. Furthermore, the 1978 Maryland Amended Annual Program Plan specifies nine categories of information which must be contained in an

IEP. MCPS documentation consistent with the state bylaw only sets forth six criteria. Finally, with regard to IEPs, federal and state legal frameworks specify IEP standards with respect to private school placement by the LEA, children enrolled in parochial or other private schools, and school personnel accountability. With the exception of MCPS documents pertaining to diagnosis of handicapped children attending private schools, no other MCPS documents covering these areas were identified.

Evaluation and Placement

MCPS documents in the areas of evaluation and placement are not sufficiently comprehensive. The standards set out in federal and state frameworks, which require that (1) tests be validated, (2) be administered by trained personnel, and (3) assess what they are designed to test rather than a child's impaired, sensory, manual, or other speaking skills, as well as the scope of the evaluation, are not addressed in local documents.

Additionally, federal and state frameworks concerning the use of a variety of sources in making placement decisions as well as the procedures that the LEA must use in evaluating children suspected of having special learning disabilities could not be identified in any documents issued by MCPS.

Related Services

None of the clarifications issued by the Bureau of Education for the Handicapped (BEH) and the Office of Civil Rights (OCR) regarding the meaning of the term "related services" appear in written documents issued by MCPS.

Exceed

The study found that the majority of MCPS documents concerning handicapped children do not exceed legal mandates. However, two, and possibly three, areas--confidentiality, individualized educational programs, and full educational opportunity--were identified as containing sections which are not expressly mandated by federal and state legal frameworks.

Confidentiality

MCPS documentation for confidentiality exceeds the federal mandate with regard to resolving differences when parents contest disclosure of personally identifiable information. MCPS documentation indicates that a hearing to resolve the problem must be conducted by an impartial hearing officer even though federal law permits an LEA official (who does not have a direct interest in the outcome of the hearing) to conduct the hearing.

Full Educational Opportunity

Finally, the degree to which MCPS is presently meeting all the needs of all children, ages 0-4, may presently exceed the state requirements to phase in programs for this population in order to provide a full educational opportunity by September 1, 1980. However, by September 1, 1980, current practice would be consistent with the state requirements.

Compilation

Examination of the adequacy of compilation of documents raised some serious concerns regarding their accessibility to staff and parents. The resolution adopted by the Board of Education, 834-78, has never been developed as a regulation for inclusion in the MCPS Policies and Procedures Handbook. Furthermore, there is no single document in which all relevant Continuum Education documents can be found. The primary document, ACES, used for communicating procedures to school level personnel, is outdated and does not contain many of the important regulations, procedures, directives, or references to other documents or in fact a reference to the resolution (834-78) adopted by the Board of Education.

Recommendations

1. Revise the specific documents found to be inconsistent with state and federal policy and disseminate instructions regarding procedural changes which may be required

2. Modify existing documents judged to be insufficiently comprehensive

3. Develop and disseminate a single document incorporating either directly or by reference all policies, procedures, and directives concerning the delivery of services for the handicapped

A COMPARISON OF FEDERAL, STATE AND LOCAL POLICIES AFFECTING THE EDUCATION OF HANDICAPPED CHILDREN IN MONGOMERY COUNTY PUBLIC SCHOOLS

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CHAPTER 1

INTRODUCTION AND OVERVIEW

I. Purpose of the Study

The purpose of this study is to analyze the policies adopted by the Montgomery County Public Schools (MCPS) Board of Education and clarifying memoranda written by the Office of Continuum Education regarding procedures affecting handicapped children to determine whether:

A. MCPS' policies, procedures and other documents are consistent[1] with federal and state mandates described below

B. MCPS' policies, procedures and other documents are sufficiently comprehensive[2]

C. MCPS' policies, procedures and other documents exceed the federal and state mandates

D. MCPS' policies, procedures, and other documents are adequately compiled to maximize their utility to the audiences affected by them

II. Federal and State Policies Analyzed

In recognition of the rights of handicapped persons living in this country, Congress has passed and the President has signed into law several pieces of legislation designed to assist states and local school districts to provide for the education of all handicapped children and prohibit discrimination on the basis of handicap against "qualified handicapped persons." The legislation includes:

A. Part B of the Education of the Handicapped Act (Part B of EHA)

B. Section 504 of the Rehabilitation Act of 1973 (Section 504)

C. The Family Educational Rights and Privacy Act of 1974 (the Buckley Amendments)

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[1] For purposes of this paper, the term "consistency" is defined on page 1-4.

[2] For purposes of this paper, the term "sufficiently comprehensive" is defined on page 1-7.

In general, Part B of EHA[3] is designed to:

1. Insure that all handicapped chidren have available to them a Free Appropriate Public Education (FAPE) which includes special education and related services to meet their unique needs

2. Insure that the rights of handicapped children and their parents are protected

3. Assess and insure the effectiveness of efforts to educate handicapped children

Section 504 of the Rehabilitation Act of 1973[4] provides that:

> No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Recipients of federal funds operating preschool, elementary, and secondary education programs must, among other things, conduct a self-evaluation, ensure that qualified handicapped applicants for employment are not discriminated against on the basis of handicap, ensure that all programs and activities are physically accessible, and ensure that all qualified handicapped persons receive a free appropriate public education (FAPE) in the most normal setting appropriate and that such persons are afforded due process for resolving disputes over placements.

The "Buckley Amendments"[5] are designed to protect the privacy rights of parents and students. The major provisions of the law require schools to provide parents (and in certain cases students) access to any official records directly relating to their children and an opportunity for a hearing to challenge such records on the grounds that they are inaccurate, misleading, or otherwise inappropriate. The protections contained in the Buckley Amendments supplement the confidentiality protections contained in Part B of EHA.

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[3] Regulations implementing Part B of EHA, as amended by P.L. 94-142, were published in the Federal Register on August 23, 1977 (42FR42474-42518) and December 29, 1977 (42FR65082). The final regulations are codified in Part 121a of Title 45 of the Code of Federal Regulations (cited to as 45C.F.R. 121a._____).

[4] Regulations implementing Section 504 were published in the Federal Register on May 4, 1977 (42FR22676-22702). The final regulations are codified in Part 84 of Title 45 of the Code of Federal Regulations (cited to as 45 C.F.R. 84._____).

[5] Regulations implementing the Buckley Amendments were published in the Federal Register on June 17, 1976 (41FR24662). The final regulations are codified in Part 99 of Title 45 of the Code of Federal Regulations (cited to as 45C.F.R. 99._____).

In addition to the federal legislation described above, Maryland has enacted several laws affecting handicapped persons, including Bylaw 13.04.01, Programs for Handicapped Children.[6]

III. Approach Used for Accomplishing the Study's Purposes

To accomplish the purposes of the study, the following tasks were performed. First, applicable written data containing policies, procedures, and other documents were collected by the Department of Educational Accountability and then reviewed by the author.[7] Second, tables were prepared which set out the federal, state, and local policies and procedures. Third, the tables were analyzed and a draft report was prepared. Fourth, the draft was submitted to appropriate persons within the county for review. Following this review, the final report was prepared.

IV. Limitations of This Paper

This paper analyzes the adequacy of MCPS' documentation. No attempt is made to determine whether or not these documents are, in fact, being implemented.

V. Organization of This Paper

This paper is organized into 16 chapters. Chapter 1 contains the introduction and the general findings and conclusions concerning the adequacy of MCPS' documentation pertaining to handicapped children. Chapters 2 through 16 of the paper contain the in-depth analysis. Each chapter analyzes a different mandate contained in the federal and state legal frameworks. The topics in this paper are the following:

Chapter 1 - Introduction and Overview
Chapter 2 - Child Identification Procedures
Chapter 3 - Confidentiality
Chapter 4 - Due Process Safeguards
Chapter 5 - Evaluation and Placement
Chapter 6 - Excess Costs, Supplanting, Comparability, and Program Costs

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[6] Regulations are codified in Code of Bylaw of the Maryland State Board of Education 13.04 Special Instructional Programs 13.04.01 Programs for Handicapped Children.

[7] Data collected at the federal level included (1) the Part B of EHA statute, regulations, bulletins, and correspondence; (2) the Section 504 statute, regulations, policy interpretations, correspondence, and letters of findings; and (3) the Buckley Amendments and the implementing regulations. The primary data collected at the state level included (1) the state bylaw, (2) the 1978 and 1979 Maryland Amended Annual Program Plan mandated under Part B of EHA, state correspondence, and State Guidelines. The primary data collected at the local level included (1) ACES; (2) Board of Education Resolution 834-78, "Policy on Education of Handicapped Children," (December 5, 1978); (3) MCPS 1979 Application for Assistance under Part B of EHA; (4) MCPS regulations; and (5) administrative memo's and directives.

Chapter 7 - Full Educational Opportunity
Chapter 8 - Individualized Education Programs
Chapter 9 - Least Restrictive Environment
Chapter 10 - Nonpublic and Residential Placements and Transportation Thereto
Chapter 11 - Notification
Chapter 12 - Personnel Development
Chapter 13 - Priorities
Chapter 14 - Public Participation
Chapter 15 - Related Services
Chapter 16 - Self-evaluation

Each chapter contains an introduction, a detailed table which describes the major federal, state, and local policies and procedures; and an analysis of the adequacy of MCPS' documents.

VI. General Findings and Conclusions

This section sets out the study's general findings and conclusions concerning the "adequacy" of MCPS' documents pertaining to handicapped children. The term "adequacy" means the extent to which MCPS documentation (1) is consistent with federal and state mandates, (2) is sufficiently comprehensive, (3) exceeds federal and state mandates, and (4) is adequately compiled to maximize their utility to the audiences affected by the policies and procedures.

On analyzing MCPS' documentation, two categories of findings and conclusions were made concerning their adequacy. The first category includes the identification of inadequacies which are technical in nature. These problems can easily be addressed by the people implementing the program and need not be addressed by the policy makers. The second category includes inadequacies which may raise questions of compliance and should be addressed by the policy makers. Chapter 1, which summarizes the study's general findings and conclusions, generally sets out only those inadequacies which may raise questions of compliance with the federal and state mandates. The section which discusses documentation which exceeds federal or state mandates is the sole exception to this rule.

A. Consistency

The first component of adequacy studied concerned consistency. The term "consistency" means the adoption of standards by MCPS that are substantially comparable to standards adopted by the Department of Health, Education, and Welfare and the Maryland State Department of Education.

1. General Conclusion

In general, MCPS' documents pertaining to handicapped children are consistent with federal and state mandates.[8] However, several inconsistencies and possible inconsistencies (depending on the Bureau of Education for the Handicapped (BEH) and the Office of Civil Rights (OCR) policy interpretations) were identified. Of special concern are regulations affecting transportation and extended school year programming.[9]

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[8] This conclusion is particularly true with respect to the following mandates: due process, child identification, personnel development, notification, priorities, placement by parents, and public participation.

2. Transportation

Section 504 provides that when a Local Education Agency (LEA) places or refers a handicapped child to a program not operated by the recipient, the recipient must ensure that "adequate transportation" to and from the program is provided at no greater cost than would be incurred if the child had attended a program operated by the recipient.[10]

Part B of EHA defines the term "related services" as including transportation.[11] Thus, where transportation is required to assist a handicapped person to benefit from special education in accordance with the IEP, it must be provided by the LEA at no cost.[12] BEH has explained that children placed in residential programs must, at a minimum, be provided transportation at the beginning and end of the school term and for scheduled school holidays and recesses. Additional transportation should be determined on a case-by-case basis.

OCR recently found that the state transportation violated Section 504 because of the arbitrary limitation of two trips. OCR has also explained that the LEA (and not the parents) must provide the necessary transportation. The LEA can make an arrangement with a parent to assume its responsiblity in exchange for reimbursement of costs. The LEA cannot require that the parent enter into such an arrangement.[13]

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[9] Inconsistencies or possible inconsistencies not described in this section of the text, but which are described in Chapters 2-16, include charging for copies of the hearing examiners record and charging for "other costs" for caring for children placed in residential placements, referrals to other schools where services in neighborhood schools are not appropriate, and taking into consideration needs of nonhandicapped students in making determinations as to the least restrictive environment for a particular handicapped child.

[10] 45C.F.R. 84.33(c) (2). See also 45C.F.R. 84.37(b) wherein "transportation" is included as a "nonacademic service."

[11] 45C.F.R. 121a.13.

[12] 45C.F.R. 121a.300.

[13] The BEH interpretation appears in a letter from Tyrell to Dormam (October 4, 1978). The OCR finding is set out in a Letter of Findings issued to the Maryland State Department of Education (February 26, 1980). The OCR policy with respect to requiring parents to transport their children is set out in a letter from OCR to Bernstein (1978).

The state bylaw provides that daily transportation or reimbursement must be provided for attendance at nonresidential facilities within a 50-mile radius.[14] The bylaws also provide that handicapped children living beyond the 50-mile radius are eligible for two round trips each year; but certain children attending residential programs shall have transportation to and from these homes on weekends.[15]

MCPS' policy regarding transportation of handicapped students is generally set out in MCPS Regulation 215-1 (September 12, 1979).[16]

In several respects, MCPS' regulation pertaining to the transportation of handicapped children to private residential programs is inconsistent with federal mandates.

MCPS' procedure of limiting to two the amount of trips for which reimbursement will be provided for residential placements outside a 50-mile radius is inconsistent with the minimum federal requirements described above.

Second, to the extent that MCPS regulation is construed as requiring that parents of handicapped students make their own transportation arrangements, such a procedure is inconsistent with Section 504. LEAs may not force parents to transport their own children.

3. Extended School Year Programming

The HEW Office for Civil Rights has stated that school districts must provide services beyond the 180 day school year for certain children (e.g., severely mentally impaired students) if the extended programming is essential to meet the individual needs of a particular child and the need has been established by appropriate evaluation methods.[17] The MSDE has issued a policy that provides 12-month programming is not required. To the extent MCPS policy, consistent with state policy, categorically prohibits extended school year programming, the policy is inconsistent with HEW/OCR policy.

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[14] State Bylaw 13.05.07 and 13.05.08.

[15] Ibid.

[16] See also Board of Education Resolution 834-78 "Policy on Education of Handicapped Children" (December 5, 1978).

[17] See Digest of Significant Case Related Memoranda, OCR (April and May 1979) at p. 28.

B. Degree of Comprehensiveness

The second component of adequacy is the degree of comprehensiveness of MCPS' standards. MCPS policies, procedures, or documents issued pursuant to a federal or state mandate (which provide that school districts shall develop specific policies or prodedures meeting certain minimum requirements) is "sufficiently comprehensive" if the MCPS policy, at a minimum, adopts or incorporates by references all of the standards set out in the state or federal law. For example, federal law sets out minimum standards which each school district must include in its procedure for conducting evaluations. A school district's procedures must, among other things, state that district personnel will (1) use validated tests, (2) ensure that tests are administered by trained personnel, and (3) ensure that tests are free from cultural bias. If MCPS adopts or incorporates Criterion 1 but fails to adopt or incorporate by reference Criteria 2 and 3, its policy pertaining to evaluation would not be sufficiently comprehensive. MCPS policies, procedures, or documents that are not issued to satisfy a federal or state mandate but that interpret a federal or state mandate are "sufficiently comprehensive" if they clearly explain that the interpretation only covers one aspect of the federal requirement or that they adopt or incorporate by reference all of the standards set out in the federal or state law. For example, federal law requires that parents must have access to their child's record prior to the scheduling of an IEP meeting or due process hearing. If MCPS adopts a comprehensive policy on access to records which specifies, among other things, timeframes for providing access to records, the policy is considered insufficiently comprehensive if it does not adopt or include a reference to the federal mandate for access prior to the IEP meeting or due process hearing.

1. General Conclusion

MCPS' documents are sufficiently comprehensive with several notable exceptions. An overview of the major deficiencies which raise questions concerning compliance appears below.

2. Individualized Educational Programs

In several respects, MCPS' policy respecting IEPs is not sufficiently comprehensive. First, MCPS' policy simply states that the IEP must be in effect "before" services are to be provided, whereas federal and state policy also prescribe when the IEP must be implemented. The federal legal framework provides that the IEP must be implemented immediately after the IEP meeting except in unusual situations.[18] State policy is that IEPs must be implemented within 30 days.[19]

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[18] Comment to Section 121a.342 (42FR42490 (August 23, 1977)).

[19] State Bylaw 13.04.01. 06D (3).

Second, federal and state law provides for an annual review of a child's IEP.[20] The state bylaw[21] specifies the issues which, at a minimum, must be addressed. MCPS' procedures are silent with respect to the scope of the review.[22]

Third, the 1978 Maryland Amended Annual Program Plan specifies nine categories of information which must be contained in an IEP.[23] MCPS' procedures, consistent with the state bylaw, only set forth six criteria.[24]

Fourth, the federal[25] and state[26] legal frameworks specify standards respecting IEPs and (a) private school placements by LEAs, (b) children enrolled in parochial or other private schools, and (c) school personnel accountability. With one exception, MCPS' documents respecting these issues were not identified. The exception is MCPS' documentation pertaining to the diagnosis of handicapped children attending private and parochial schools.

3. Evaluation and Placement

In several respects, MCPS' documents concerning evaluation and placement are not sufficiently comprehensive. First, the federal[27] and state[28] legal frameworks require that tests (1) be validated, (2) be administered by trained personnel, and (3) assess what they are designed to test rather than a child's impaired sensory, manual, or other speaking skills. Further, federal and state law specifies the scope of the evaluation. MCPS documentation addressing evaluation standards fails to specifically consider these areas.

Second, with respect to placement procedures, the federal[29] and state[30] legal frameworks state that an LEA, in making placement decisions, must make use of a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. MCPS' regulation states that "no single assessment result will be used to determine placement" but does not mention any of these other sources.[31]

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20. 45C.F.R. 121a.343; State Bylaw 13.04.01.06D (7).
21. State Bylaw 13.04.01.06D (3).
22. See ACES.
23. 1978 Maryland Amended Annual Program Plan.
24. ACES on pages 18 and 19-20.
25. 45C.F.R. 121a.347, .348, .349.
26. 1978 and 1979 Maryland Amended Annual Program Plans and State Bylaw 13.04.01.6D(4)(f).
27. 45C.F.R. 121a.533 and 45C.F.R. 84.35(c).
28. State Bylaw 13.04.01.05C and .06C.
29. 45C.F.R. 121a.533 and 45C.F.R. 84.35(c).
30. State Bylaw 13.04.01.05 and .06.
31. Board of Education Resolution 834-78 "Policy on Education of Handicapped Children."

Third, the federal legal framework includes specific standards concerning the procedures LEAs must use in evaluating children suspected of having specific learning disabilities.[32] No specific documents issued by MCPS were identified.

4. Related Services

BEH and OCR have issued numerous clarifications concerning the meaning of the term "related services."[33] None of these clarifications appear in written documents issued by MCPS.

C. MCPS Documents that Exceed Federal and State Mandates

1. General Conclusions

Almost all documents concerning handicapped children adopted by MCPS do not exceed the federal and state mandates. However, two and possibly three areas were identified which are not expressly mandated by the federal and state legal frameworks.

2. Confidentiality

Federal law[34] provides that a parent may contest the disclosure of personally identifiable information at a hearing. The hearing may be conducted by an official of the LEA who does not have a direct interest in the outcome. MCPS' regulation[35] exceeds this federal mandate since it provides that the decision must be rendered by an impartial hearing officer rather than by an official of the LEA.

3. Individualized Education Program

An IEP generally specifies the special education and related services which are needed to meet the unique needs of each handicapped child.[36] The IEP must include all services necessary to achieve this goal, not simply services presently available in the district. Two aspects of MCPS' documents exceed federal and state mandates. First, ACES requires that detailed educational plans be developed which identify daily teaching activities based on short-term objectives specified in the IEP. These procedures are designed to maximize the likelihood that each handicapped child's unique needs will, in fact, be addressed. The development of detailed educational plans for each handicapped child is not mandated by federal or state law, unless, of course, detailed individual lesson plans are prepared for nonhandicapped children. Second, MCPS' procedures requiring parent "sign-offs" of IEPs exceeds the federal mandates but is required by state bylaw 13.04.01.06 (D)(3).

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[32] 45C.F.R. 121a.540-541.

[33] For example, BEH and OCR have issued clarifications concerning medical services, chiropractic services, psychotherapy, hearing aids, optometric services, neurological examinations, evaluations performed by optometrists, and catheterization.

[34] 45C.F.R. 121a.570 and 45C.F.R. 99.22.

[35] MCPS Regulation 545-1.

[36] 45C.F.R. 121a.340 and State Bylaw 13.04.01.06F (1).

4. Full Educational Opportunity

Section 504 generally provides that handicapped children must receive a FAPE to the extent nonhandicapped children of a comparable age are provided an education by the LEA. This mandate was to have been satisfied as of June 3, 1977, but if not practicable, no later than September 1, 1978.[37]

Part B of EHA provides that a FAPE must be made available to all handicapped children ages 3-18 not later than September 1, 1978, and to all handicapped children ages 3-21 not later than September 1, 1980.[38] With respect to children ages 3-5 and 18-21, the 1980 goal need not be satisfied if state law prohibits or does not authorize the expenditure of public funds to provide for the education of nonhandicapped children of a comparable age.

State law[39] provides that LEAs must phase in programs for children ages 0-4 by September 1, 1980. MCPS may be exceeding state timelines, depending on the degree to which it is presently meeting all the needs of all children ages 0-4.

D. Adequacy of Compilation of Policies, Procedures, and Other Documentation

1. General Conclusion

MCPS' method of compiling documents affecting handicapped persons is inadequate. Key standards are set out in numerous documents, not all of which are compiled in one place and then distributed to the persons affected by or responsible for implementing the standard. There is no single document that includes or references all the documentation. ACES, the key document distributed to the schools, is incomplete and outdated.

2. Specific Problems

To achieve full compliance with federal and state mandates, local policies and procedures must be (a) consistent with federal and state policy and (b) comprehensive. However, the adoption of consistent and comprehensive policies and procedures is not sufficient to ensure full compliance. These local documents must be adequately communicated to the audiences affected by and responsible for their implemention. Furthermore, all official pronouncements of policy should be reflected in MCPS' officially issued regulations.

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[37] 45C.F.R. 84.33(a) and 84.33(d).

[38] 45C.F.R. 121a300.

[39] State Bylaw 13.04.01.01 and .04 B.

In general, the policies adopted by the Board of Education and implementing procedures are not compiled in a manner that facilitates full compliance. MCPS policies and procedures are set out in numerous documents.[40] There is no system for integrating the various policies and procedures contained in these documents. ACES, the primary document used for communicating local procedures to school level personnel, does not contain many of the important regulations nor are references made to the other documents setting out the policies. For example, ACES contains a two-page summary overview of the due process requirements. However, no mention is made of the detailed procedures set out in a document entitled "Rules for Procedures for Hearings Before the Montgomery County Board of Education Continuum Education Hearing Officer or Panel." Furthermore, many of the important policies do not appear in officially issued regulations. The most significant deficiency concerns the Policy on Education of Handicapped Children (Board Resolution 834-78) for which a complete set of regulations have not yet been developed.

In addition to the problems discussed above, ACES is outdated. For example, references are made to "proposed" state bylaws, despite the fact final state regulations have been in existence since May 19, 1978.

VII. About the Author

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The firm's practice is currently limited to matters relating to education, children, and handicapped persons. Mr. Silverstein is the former attorney-advisor to the Handicapped Discrimination Branch, Office for Civil Rights, Department of Health, Education, and Welfare. His major responsibilities included drafting policies and training staff concerning Section 504 of the Rehabilitation Act of 1973. Mr. Silverstein was also the former director of the Legal Standards Project at the Lawyers Committee for Civil Rights Under Law. His major responsibilities in this capacity included drafting proposed legislation reorganizing and amending Title I of the Elementary and Secondary Education Act.

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[40] See supra., note 7 for a partial list of local documents containing policy.

CHAPTER 2

CHILD IDENTIFICATION PROCEDURES

I. Overview of Federal and State Mandates

Federal and state laws require that school districts establish child identification procedures.[1] The procedures must address two major purposes. First, the procedures must identify and locate all handicapped children who reside in the school district. The word "all" includes children ages 0-21, regardless of the severity of their handicap and regardless of whether the school district is presently under an obligation to provide all age groups with a FAPE.[2] Second, the procedure must include practical methods of determining which children are and are not receiving needed services, i.e., the appropriateness of the educational opportunity for those children for whom the school district must provide a FAPE.[3]

To accomplish these goals, school districts must maintain a comprehensive plan that must include internal screening procedures and external identification procedures. Before submission of the plan, school districts must hold public hearings and provide an opportunity for comment.[4] The internal procedures must, for example, provide for the screening of all children of kindergarten age and all children entering the school system for the first time.[5] Any child identified with a reasonable likelihood as having special educational needs must be referred for an appropriate educational evaluation (see Chapter 5).[6] The evaluation must take place within 45 days from the date of referral.[7]

The external identification procedures involve the development of a public awareness program concerning the nature and extent of the school district's obligation to provide for the education of handicapped children, regardless of the severity of their handicap, and procedures whereby the public may refer to the MCPS children suspected of having handicapping conditions.[8]

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[1] The federal mandates are set out on pages 2-3 and 2-4, Column 1. The state mandates are set out in Column 2.

[2] See 45C.F.R. 121a.220 of EHA Regulation, 45C.F.R. 84.32 (a) of Section 504 Regulations, and State Bylaw 13.04.01.04 (3). The interpretation that the child find system must extend to children ages 0-21 appears in OE's comment following 45C.F.R. 121a.300, 42FR42488 (August 23, 1978).

[3] 45C.F.R. 121a.222 of EHA Regulation and State Bylaw 13.04.01.04C and .053.

[4] State Bylaw 13.04.01.04C.

[5] State Bylaw 13.04.01.05B (1) and (2).

[6] State Bylaw 13.04.01.05B (5).

[7] Ibid.

[8] See MSDE directive entitled "Criteria and Guidelines: Local Educational Agency Child Find Plan" (Appendix E of 1976 State Plan).

These procedures must reach all children ages 0-21, including children in public and private agencies and institutions.[9] The procedures must satisfy seven criteria established by the state.[10]

II. Analysis of Local Documentation

MCPS documents are generally consistent with the federal and state mandates.[11] First, the internal screening procedures are consistent with state law. Second, the external identification procedures are generally consistent with the federal mandates and seven criteria contained in state guidelines. Third, public meetings were held and opportunity for comment was provided. Finally, MCPS' Continuum Education Data System provides sufficient information to identify those children who are and are not receiving needed services in compliance with the federal mandate.[12]

Although MCPS' documenation is generally consistent with federal and state mandates, its external identification procedure may not be sufficiently comprehensive to reach all the audiences affected by the federal and state mandates. In clarifying the meaning of its regulations implementing Part B of EHA, HEW explained:

> The local educational agency is responsible for ensuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction.[13]

In identifying (a) the areas in which public awareness needs to be stimulated, (b) the audiences which will be the focus of the campaign, and (c) interagency collaboration and involvement, MCPS' documents make no mention of reaching children in public and private agencies and institutions within the county. Further, the fact that the child find system extends to all children ages 0-21 is inadequately stated.

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9. See comment following 45C.F.R. 121a.220 of EHA Regulation (42FR42486, August 3, 1977).
10. Supra., notes 4-8 Chapter 2.
11. MCPS' documentation is set out in Column 3 on pages 2-3 and 2-4.
12. Under the system, the services recommended and the services actually provided for each handicapped child receiving special education must be described. When the services recommended are in fact provided, the child is counted as receiving needed services. When the recommended services are not actually provided, the child is counted as not receiving needed services.
13. Supra., note 9 Chapter 2.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphrased from the sources.

Child Idenification Procedures

FEDERAL	STATE	LOCAL
Part B of EHA A school district must adopt procedures which ensure that all children within its jurisdiction who are handicapped (regardless of the severity of the handicap), including children in all public and private agencies and institutions, who are in need of special education are identified, located, and evaluated. The procedure must include practical methods of determining which children are and are not receiving needed services (45C.F.R. 121a.220). Section 504 A school district must annually undertake to identify and to locate every qualified handicapped person in its jurisdiction who is not receiving a public education (45C.F.R. 84.32(a)).	State Bylaw A school district must maintain a comprehensive plan which provides for the identification of children who may be in need of special education services and for the delivery of these services. The plan must be submitted annually. The plan must be consistent with guidelines established by the MSDE (See below) (13.04.01.04C). Before Submission of Plan, the LEA must hold public hearings and provide an opportunity for comment (13.04.01.04C). School districts must adopt a screening program for all children of kindergarten age or upon first entry. The program must include, among other things, information specifying the age at which developmental milestones were attained, the existence of possible special needs, the child's visual, auditory, and motor functioning (separately or in integration) and a language screening (13.04.01.05B(1) and (2)). A comprehensive screening, similar to the kindergarten screening must be provided to children within 30 calendar days of a request from a parent or guardian (13.04.01.05B(3)). Children identified with a reasonable likelihood of having special educational needs must be referred for an appropriate educational assessment. The assessment must take place within 45 calender days from a date of referral (See Evaluation and Placement) (13.04.01.05B(5)).	MCPS's comprehensive Child Find Plan appears in its 1979 application for Part B of EHA assistance. The plan uses the format required by the state. Criteria 1-Documentation: The county maintains a "scrapbook." Criteria 2-Designation of Responsible Employees: A child find office has been set up at Mark Twain School (now housed in the Educational Services Center) and staffed by two professionals and a clerk-typist. Criteria 3-System for Handling Assessment and Evaluation: A system of routing or referring persons has been established. The precise handling depends on information obtained during intake. Criteria 4-Confidentiality: MCPS follows its Confidentiality Regulation 545-1. Criteria 5-Interagency Collaboration: Identifies agencies contacted. Criteria 6-Initial Referrals: MCPS has developed needed forms. Criteria 7-Evaluation of System: Evaluation includes documentation of all activities and maintenance of logs and files.

FEDERAL	STATE	LOCAL
	Bylaw cont. School districts must establish recordkeeping procedures to ensure the maintenance of a census of all children, from birth to age 20, who require special education. Records must satisfy federal and state privacy laws (13.04.01.05D). Maryland Amended Annual Program Plan (Appendix E of 1979 Plan includes MSDE "Criteria and Guidelines: Local Educational Agency Child Find Plan"). The guidelines specify seven criteria which an LEA's procedure must satisfy: (1) awareness techniques must be sufficient to saturate the geographic area, (2) designation of agent within LEA to serve as intake officer, (3) delineation of the system for handling assessment and evaluation of children believed to be handicapped, (4) system for maintaining confidentiality, (5) interagency documentation, (6) number and source of initial referrals, and (7) procedures for evaluating the system.	The procedure for determining which children are and are not receiving needed services appears in a document entitled "Continuum Education Data System: Users' Guide." To determine whether handicapped children are receiving needed services, the staff must supply information describing "services recommended" and "services provided." If there is a discrepancy, the county knows that a child is not receiving needed services.

CHAPTER 3

CONFIDENTIALITY

I. Introduction

Federal and state laws[1] require that a school district's student record-keeping system respect the privacy rights of parents and students. The federal mandates are set out in the regulation implementing Part B of EHA and the so-called "Buckley Amendments."[2] The state mandates appear in Bylaw 13.07.05.05. MCPS policy and procedures are generally set out in Regulation 545-1 and MCPS' 1979 Application for Assistance under Part B of EHA.[3]

This chapter of the paper addresses the following 14 issues concerning confidentiality of records:

Students' Rights

Notice of Rights

Waiver of Rights

Access to Records by Parents

Record of Access

Lists of Types and Locations of Information

Fees for Copies

Amendments of Records at Parents' Request

Opportunity for a Hearing

Hearing Procedures

Consent

Conditions for Disclosure of Personally Identifiable Information

Safeguards

Destruction of Records

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1. A detailed outline of the federal and state mandates are set out in Columns 1 and 2 on pages 3-8 through 3-15.
2. The official title of the Act is "The Family Educational Rights and Privacy Act of 1974" (Section 438 of the General Education Provisions Act--20U.S.C.1232g).
3. A detailed outline of MCPS' documentation is set out in Column 3 on pages 3-8 through 3-15.

II. Students' Rights

A. Overview of the Legal Mandates

In general, federal law transfers to pupils who are 18 years or older the rights initially granted to their parents.[4] The fact that a child, who is 18 years or older, is dependent for support on his/her parents does not affect these rights. However, parents of dependent children retain the right to have access to their children's records without prior consent of their child. State policy misconstrues federal policy by limiting the transfer of rights to 18-year-olds who are not dependent.[5]

B. Analysis of MCPS Documents

MCPS ignores the inconsistent state policy, adopts the federal mandates, and then extends rights to children who are younger than 18 but who are married.[6]

III. Notice of Rights

A. Overview of Legal Mandates

Federal law requires that MCPS notify parents of their privacy rights under Part B of EHA and Buckley. The notice must include, among other things, rights under the statutes and regulations, locations of where the policy may be obtained, and the right to file a complaint.[7]

B. Analysis of MCPS' Documents

MCPS' 1979 Application for Assistance under Part B of EHA explains that "written notice is first given to parents at the conference with the school psychologist." This response does not satisfy the federal mandates. However, a review of MCPS Regulation 545-1 (which explains to parents their right to file a complaint); a document prepared by parents for MCPS entitled "Is Your Child Handicapped? Parent-to-Parent Advice on What To Do"; and a document prepared by MSDE entitled "Legal Rights - A Handbook for Parents" when viewed together constitute substantial compliance with the federal mandate to the extent that these documents are widely disseminated to parents.

IV. Waiver of Rights

The Buckley Amendments provide that parents (a) may waive their rights (in writing and if signed) and revoke the waiver and (b) may not be required to waive their rights.[8] No MCPS documentation was located.

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[4] 45C.F.R. 121a.574; 45C.F.R. 99.4
[5] 1978 State Plan on p. 45.
[6] 1979 Application for Assistance Under Part B of EHA.
[7] 45C.F.R. 121a.561; 45C.F.R. 99.6.
[8] 45C.F.R. 99.7.

V. Access to Records by Parents

A. Overview of Legal Mandates

Federal law generally provides that LEAs must permit parents to inspect and review any educational records relating to their children.[9] LEAs must comply without unnecessary delays (not to exceed 45 days) and before IEP meetings or due process hearings.

MCPS' 1979 Application for Assistance under Part B of EHA states that it is the school system's practice that "most requests are acted upon...before any IEP or due process hearing." MCPS Regulation 545-1 provides that access to files will occur within the 45-day timeframe but is silent with respect to guaranteed access prior to IEP and due process hearing. Thus, the procedure in the 1979 Application is inconsistent with the federal mandate and 545-1 is not sufficiently comprehensive.

VI. Record of Access

A. Overview of Legal Mandates

Part B of EHA contains a broad mandate that LEAs keep records of all parties obtaining access to records for handicapped children.[10] The regulations issued under the Buckley Amendments extend the mandate to include requests for information and specify categories of persons for whom records need not be kept[11] for example, school officials who have a legitimate interest and parents. There is a question as to whether Part B of EHA requires that records be kept for school officials and parents even though Buckley excludes such persons from the requirement. OE has explained that LEAs need not keep records for parents but have not rendered an interpretation regarding school officials.

B. Analysis of MCPS' Documentation

MCPS' documentation is consistent with the Buckley Amendments. It may or may not be consistent with Part B of EHA regulations, depending upon whether OE interprets its EHA regulation to require that records be kept of MCPS staff obtaining access to student records.[12] An OE policy determination should be sought.

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[9] 45C.F.R. 121a.562; 45C.F.R. 99.11.

[10] 45C.F.R. 121a.563.

[11] 45C.F.R. 99.32.

[12] See 1979 Application for Assistance under Part B of EHA on page 2A and MCPS Regulation 545-1. Note that the procedure in the 1979 application is inconsistent with the Buckley mandates since it limits the mandate to parties actually obtaining information, even though Buckley extends the mandate to requests.

VII. Lists of Types and Locations of Information

Federal laws provide that LEAs must provide lists of types and locations of information collected and maintained.[13] MCPS' documentation is consistent with the federal mandate.[14]

VIII. Fees

Federal law generally provides that LEAs may charge a fee for copies of records made for parents if the fee does not effectively prevent a parent from exercising his/her rights to ensure privacy.[15] LEAs may not charge fees for search and retrieval.[16] MCPS' documentation is consistent with the federal mandates.[17]

IX. Amendments to Records at Parent's Request

Federal law provides that parents who believe records are inaccurate, misleading, or violate the privacy or other rights of the child may request that the record be amended.[18] The LEA must act within a reasonable time. If the LEA refuses to amend, it must inform the parent of his/her right to a hearing. MCPS documentation is consistent with the federal mandates.[19]

X. Opportunity for a Hearing

A. Overview of the Legal Mandates

The LEA must provide parents an opportunity for a hearing to challenge, among other things, the accuracy of their child's records. If the agency agrees with the parent, it must change the record. If it disagrees, it must inform the parents of their rights to place in their child's record a statement explaining the basis for their disagreement. Explanations must be maintained as long as the contested record is maintained. If the contested record is disclosed, the parents' explanation must also be disclosed.[20]

B. Analysis of MCPS' Documents

MCPS' documents are generally consistent with the federal mandate.[21] However, they are not sufficiently clear. Rather the regulation simply states that the example will be placed in the educational record.

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[13] 45C.F.R. 121a.565.
[14] 1979 LEA Application on page 2A; MCPS Regulation 545-1.
[15] 45C.F.R. 121a.566; 45C.F.R. 99.8.
[16] Ibid.
[17] 1979 LEA Application on page 2A.
[18] 45C.F.R. 121a.567; 45C.F.R. 99.20.
[19] 1979 LEA Application at page 2A and MCPS Regulation 545-1.
[20] 45C.F.R. 121a.568, .569; 45C.F.R. 99.21.
[21] 1979 LEA Application at p. 2A and MCPS Regulation 545-1.

XI. Hearing Procedures

A. Overview of the Legal Mandates

Federal law states that the hearing must be held within a reasonable period of time. Parents must be given notice of the date, place, and time. The hearing may be conducted by an official of the LEA who does not have a direct interest in the outcome. Parents must be afforded a full and fair opportunity to present evidence and may be represented by a person of their choice. The decision must be in writing, handed down within a reasonable time, be based solely on the evidence presented, and include a summary of the evidence and the reasons for the decision.[22]

B. Analysis of MCPS' Documents

MCPS' documentation is generally consistent with the federal mandates.[23] However, in two instances, it exceeds the federal mandates. First, it specifies that the decision must be handed down in ten days (instead of within a "reasonable" period). Second, it provides that the decision must be rendered by an impartial hearing officer rather than by an official of the LEA who does not have a direct interest in the outcome.

XII. Consent

In general, LEAs must obtain written consent of a parent before disclosing information from educational records.[24] MCPS' documentation is consistent with this federal mandate.[25]

XIII. Conditions for Disclosure of Personally Identifiable Information

A. Overview of Legal Mandates

1. Federal law provides that the persons to whom information is properly disclosed must be informed that they may not redisclose the information to other unauthorized persons.[26]

2. Transferral of Records

   Federal law provides that LEAs transferring records to other schools and school systems must (a) make reasonable attempts to notify parents, (b) provide a copy upon request, and (c) provide parents with an opportunity for a hearing.[27]

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[22] 45C.F.R. 121a.570; 45C.F.R. 99.22.

[23] MCPS Regulation 545-1.

[24] 45C.F.R. 121a.571; 45C.F.R. 99.30, 31, and 32.

[25] 1979 LEA Application. It should be noted that the application simply states that MCPS practice is consistent with EHA and Buckley; it does not spell out how MCPS will construe the federal provisions.

[26] 45C.F.R. 99.33.

[27] 45C.F.R. 99.34.

3. Emergency

Federal law provides that personally identifiable information may be disclosed to authorized persons in the case of an emergency if knowledge of the information is necessary to protect the health or safety of the student or others.[28]

4. Directory Information

Federal law states that directory information may be disclosed if the LEA gives notice of the following: (a) categories included, (b) the right of the parent to refuse to permit the directory designation with respect to their child, and (c) the period of time within which the parent must inform LEA of their decision.[29]

B. Analysis of MCPS Documentation

1. Redisclosure

No documentation was located.

2. Transferral of Records

MCPS' procedures are substantially consistent with federal mandates. MCPS provides an opportunity for a hearing with respect to information in cumulative files transfered to other schools within the district and provides parents with an absolute veto over the transferral of records in the confidential file to private schools and schools in other districts.[30]

3. Emergency Situations

MCPS' procedures are generally consistent with the federal mandates.[31]

4. Directory Information

MCPS' regulation is consistent with federal mandates.[32]

XIV. Safeguards

A. Overview of Legal Mandates

LEAs must adopt procedures for ensuring confidentiality, including training of persons using personally identifiable information and the maintenance of lists of persons who may have access to such information.[33]

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[28] 45CFR. 99.36.
[29] 45C.F.R. 99.37.
[30] MCPS Regulation 545-1.
[31] Ibid.
[32] Ibid.

B. Analysis of MCPS' Documentation

MCPS' procedures are generally consistent with federal mandates, with the exception that these procedures do not contain express reference to the training of users of personally identifiable information. The MCPS' procedures are more comprehensive than the federal mandate in that they specify, for example, that confidential information must be kept under lock and key and that it must be reviewed annually to determine, among other things, if certain of the information is outdated.[34]

XV. Destruction of Records

A. Overview of Legal Mandates

LEAs must inform parents when personally identifiable information is no longer needed. Parents may request that this information be destroyed. If no request is received, LEAs may retain the information. The following information may be retained indefinitely: name, address, telephone number, grades, grade level completed, and year completed. Records may not be destroyed if there is an outstanding request to review them. Explanations prepared by parents must be retained as long as the contested record is retained. The record of access must be retained as long as the record to which it pertains exists.[35]

B. Analysis of MCPS' Procedures

MCPS' procedures exceed the federal mandates in two respects. First, MCPS' procedure of requiring an annual review of confidential files exceeds the federal mandates.[36] Second, MCPS' administrative directive of indefinitely retaining records of handicapped students in Levels 4, 5, and 6 exceeds federal mandates.[37]

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[33] 45C.F.R. 121a.572.

[34] MCPS Regulation 545-1.

[35] 45C.F.R. 121a.573; 45C.F.R. 99.13.

[36] 1979 LEA Application; MCPS Regulation 545-1 at p. 5.

[37] MCPS Memorandum from the Acting Superintendent of Schools to All Principals entitled "Retention of Records for Handicapped Students." (June 13, 1979).

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphrased from the sources.

Confidentiality

FEDERAL	STATE	LOCAL
1. **Student's Rights** a) **Part B of EHA** SEA must include in its plan policies regarding extent to which children are afforded rights of privacy similar to those afforded to their parents (45C.F.R. 121a.574). b) **Buckley Amendments** Child who are 18 must be accordbd the rights formerly accorded to their parents 45C.F.R. 99.4., i.e., these rights are transferred to the student. The status of an eligible student as a dependent of his/her parents does not affect his/her right to be accorded rights accorded to parents. However, parents of dependent children who are 18 or older do have access to their child's records without prior consent of their child.	1. **Student's Rights** **State Plan** State Bylaw 13.07.05.05 adopts virtually verbatum the provisions set forth in the regulations implementing the "Buckley Admendments" (45C.F.R. Part 99).	1. **Student's Rights** The rights of parents are transferred to the student at age 18 in accord with Buckley Amendments (1979 Application for Assistance under Part B of EHA on p. 2b). A pupil who is 18 or older or who is married has the same rights as those granted to the pupil's parents. Parents of dependent children, however, do have access to their child's educational records without prior consent of the eligible student. If the child can demonstrate that he/she is not a dependent of the parents, then the parents would have no disclosure or access privileges (MCPS Regulation 545-1 on p.4).
2. **Notice of Rights** a) **Part B of EHA** School districts must notify parents of their privacy rights. The notice must be in the native languages of the various populations and include (1) a description of the children on whom personally identifiable information is maintained, types of information sought, data gathering methods, and uses to be made of information; (2) policies regarding storage, disclosures to third parties, retention, and destruction of personally identifiable information; and (3) a description of all rights under Buckley Amendments. Before any major identification, location, or evaluation activity, a notice must be published or announced in media with circulation adequate to notify parents (45C.F.R. 121a.561).		2. **Notice of Rights** "Written notice is first given to parents at the conference with the school psychologist. This informed consent form is available in English and Spanish. Presently due process procedures and rights of parents, children, and educators are available in English only. Translation into other languages is currently taking place and will be available for the coming year" (1979 Application for Assistance under Part B of EHA at p.2). MCPS Regulation 545-1 generally sets out parents' privacy rights and informs them of the right to file complaint with HEW.

FEDERAL	STATE	LOCAL
b) Buckley Amdendments Parents must be notified of the following: (1) rights under statute and regulation and location of where policy may be obtained and (2) rights to file complaints (45C.F.R. 99.6).		
3. Waiver of Rights Buckley Amendments Parents may waive any right granted under act or implementing regulations. Waiver must be in writing and signed. LEA may not require that a parent waive rights. Waivers may be revoked respecting any action occurring after the revocation. When a student turns 18, he/she may revoke waivers signed by parents (45C.F.R. 99.7).		3. Waiver of Rights No documentation found.
4. Access to Records by Parents a) Part B of EHA LEA must permit parents to inspect and review any educational records relating to their children. LEAs must comply without unnecessary delays and before any meeting regarding an IEP or due process hearing and in no case more than 45 days after the request has been made. These rights to inspect and review include: (1) the right to explanations and interpretations, (2) provision of copies if failure to provide copies would effectively deny right to inspect and review, and (3) right to have a representative inspect and review (45C.F.R. 121a.562).		4. Access to Records by Parents Access to cumulative folders will, whenever practicable, be granted within ten school days after the written request has been made and must be granted within a 45-consecutive-day timeframe. Where health records are being reviewed, the appropriate professional staff person is to be present to interpret, if requested. Access to Confidential Folders will, whenever practicable, be granted within 10 days after the written request has been made and must be made within 45 consecutive days. The confidential folder will be open to the pupil's parents in conference with the principal or professional designee. If psychological or health records are being reviewed, the appropriate professional staff

b) Buckley Amendments

LEAs must permit parents to inspect and review educational records of their children. Agency must comply with the request within a reasonable period of time, but in no case more than 45 days after the request was made. The right to inspect and review includes: (1) right to explanations and interpretations and (2) right to obtain copies where failure to provide copies would effectively deny rights to inspect and review (45C.F.R. 99.11).

5. Record of Access

a) Part B of EHA

LEA must keep a record of parties obtaining access to educational records for handicapped children used under the regulation, including name of party, date of access, and purpose for which record used (45C.F.R. 121a.563).

b) Buckley Amendments

LEAs must keep records of each request for and each disclosure of personally identifiable information from educational records. Records must indicate: parties who requested or obtained information, and interests these parties had in obtaining information. Records need not be kept with respect to disclosures to parents, disclosures pursuant to a consent of a parent when consent is specific to parties to whom information is disclosed, school officials who have a legitimate educational interest, or with respect to directory information. The record of disclosure may be inspected by the parent (45C.F.R. 99.32).

c) Policy Interpretations

HEW did not intend any difference between EHA and Buckley regulations with

person may also be present to interpret the record (MCPS Regulation 545-1).

Most requests for access are acted upon without unnecessary delay and before any IEP meeting or due process hearings and in no case in more than 45 days after the request. MCPS responds to requests for explanations and interpretations. MCPS makes copies available if failure to provide copies would effectively prevent parents from exercising their rights. Representatives of parents may inspect and review the educational record of the students. (1979 Application for Assistance under Part B of EHA at p.2).

5. Record of Access

MCPS keeps a record of parties obtaining access to records, except access by parents and authorized employees of the participating agency, including name, date of access, and purpose for which record used (1979 Application for Assistance under Part B of EHA on p.2a).

A record (log) of individuals who have requested and/or obtained access to a pupil's cumulative record must be maintained. The log must contain person's name, date, and purpose. Exceptions to this procedure are with respect to: a) employees of the district who have a legitimate professional interest, e.g., principal, teachers, and continuum education personnel; b) physicians, public health nurses, and supporting health center personnel; and c) parties for whom written consent of the parent has been received. For each confidential file, the responsible employee must maintain a log showing the date and the name of the individual who requests and/or is authorized access to the folder and the purpose of the folder review in accordance with the procedure pertaining to cumulative records described above (MCPS Regulation 545-1).

FEDERAL	STATE	LOCAL
respect to parent access, parent consent, and directory information. EHA regulations apply only to records for handicapped children maintained by agencies participating under Part B of EHA Programs. EHA regulation applies to persons obtaining information: Buckley also applies to persons requesting information.		
6. Lists of Types and Locations of Information a) Part B of EHA Parents must be provided, on request, a list of the types and locations of educational records collected, maintained, or used by the agency (45C.F.R. 121a.565).		6. Lists of Types and Locations of Information MCPS provides parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency (1979 Application for Assistance under Part B of EHA on p.2a). MCPS Regulation 545-1 lists the types of information collected with respect to: a) all students, b) individual students to develop the most effective educational program, and c) individual students as required by federal and state officials.
7. Fees Part B of EHA and Buckley LEAs may charge a fee for copies of records made for parents if the fee does not effectively prevent the parents from exercising their rights to inspect and review. LEAs may not charge for search or retrieval (45C.F.R. 121a.566; 45C.F.R. 99.8).		7. Fees MCPS charges a fee for additional copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their rights to inspect and review records. There is no charge for search and retrieval (1979 Application for Assistance under Part B of EHA.)
8. Amendment of Records at Parent's Request Part B of EHA and Buckley A parent who believes information in educational records are inaccurate, misleading, or violates the privacy or other rights of the child may request that the LEA amend the record. The LEA must act on the parent's request within a reasonable time. If the LEA refuses the parent's request, it must inform them of the refusal and advise the parent of the right to a hearing (see below) (45C.F.R. 121a.567; 45C.F.R. 99.20).		8. Amendment of Records at Parent's Request If MCPS decides to refuse to amend information in the education records of a child when requested to do so by the parent, MCPS will inform the parent of the refusal and advise the parent of the right to a hearing. (1979 Application for Assistance under Part B of EHA on p.2A). The parent has the right to challenge or request correction or deletion of school record material they feel to be incorrect or misleading in accordance with the following procedure: (1) the parent submits a request in writing and (2) if agreement is reached corrections are made (MCPS Regulation 545-1).

FEDERAL

9. Opportunity for A Hearing

Part B of EHA and Buckley

The LEA must, on request, provide an opportunity for a hearing to challenge records to ensure that they are not inaccurate, misleading, or otherwise in violation of privacy or other rights of the child.

If the agency agrees with the parent, it must amend the records and inform the parent in writing. If the LEA disagrees with the parent, it must inform the parent of its decision and of the parent's right to place in the records a statement commenting upon the information and/or setting forth any reasons for their disagreeing with the LEA's decision. Explanations must be maintained as long as the record or contested partion is maintained and if the record or contested portion is disclosed, the explanation must also be disclosed (45C.F.R. 121a.568, .569, and 45C.F.R. 99.21).

10. Hearing Procedures

a) Part B of EHA

Hearings conducted under EHA must satisfy standards set out in the regulations implementing the Buckley Amendments (45C.F.R. 121a.570).

b) Buckley Amendments

The hearing must be held within a reasonable period of time after the LEA has received the request. The parent must be afforded a full and fair opportunity to present evidence and may be represented by a person of his/her choice. The decision must be in writing and be handed down within a reasonable time.

The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision (45C.F.R. 99.22).

STATE

LOCAL

9. Opportunity for A Hearing

MCPS provides an opportunity for a hearing to challenge information in education records alleging that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child (1979 Application for Assistance under Part B of EHA on p.2A).

In the event that the hearing officer decides in favor of the LEA, the hearing officer must inform the parents of their right to place in the records written reasons for disagreeing with the hearing officer/panel (MCPS Regulation 545-1).

10. Hearing Procedures

The parent must request a hearing in writing to the associate superintendent for continuum education (designee). He/she is responsible for: a) setting a date within a reasonable period; b) providing notice to the parent, and the date, place, and time of the hearing; c) appointing an impartial officer/panel; and d) informing the parent of right to assistance or representation at his/her own expense.

The parent must be afforded a full and fair opportunity to present evidence. The hearing officer/panel must make a decision within ten days after the hearing and notify, in writing, the parent and LEA officials of the decision. The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision (MCPS Regulation 545-1).

FEDERAL	STATE	LOCAL
11. **Consent**		11. **Consent**
a) **Part B of EHA** Parental consent must be obtained before personally identifiable information is (1) disclosed to anyone other than officials of participating agencies or used for any purpose other than meeting a requirement of the regulation, and (2) agencies or institutions subject to the Buckley Amendments may not release information from records unless authorized to do so under Buckley. SEAs must include policy which are used in the event a parent refuses to provide consent (45C.F.R. 121a.571).		MCPS' obtain consent before personally identifiable information is disclosed to anyone other than officials of participating agencies, consistent with Section 121a.571 of EHA Regulations and Buckley Amendments regulation (1979 Application for Assistance under Part B of EHA on p.2a; see also MCPS Regulation 545-1 on p.12).
b) **Buckley Amendments** In general, LEAs must obtain the written consent of a parent before disclosing information from educational records. The written consent must be signed and dated by the parent and include a specification of the records to be disclosed, the purpose(s) of the disclosure, and the parties to whom the information is disclosed. When information is disclosed, the LEA must provide a copy to the parent. Prior parental consent is not necessary with respect to the disclosure of directory information or for disclosure to the parent of the child. Further, prior consent is not required with respect to disclosure of personally identifiable information to individuals and agencies listed in 45C.F.R. 99.31, including, for example, other school officials, officials of another school or school system in which the student seeks to enroll, SEAs, GAO, the secretary, or the commissioner (45C.F.R. 99.30 and .31). LEAs must maintain a record with the student's educational records indicating, among other things, the parties who have requested or obtained information and the legitimate interests in obtaining the information (45C.F.R. 99.32).		

FEDERAL

12. Conditions for Disclosure of Personally Identifiable Information

a) Redisclosure

LEAs may disclose personally identifiable information only on the condition that persons to whom the information is disclosed will not redisclose the information to any other unauthorized person without prior consent (45C.F.R. 99.33).

b) Transferring Records

LEAs transferring records of a student to officials of other schools and school systems must (1) make reasonable attempts to notify the parents of the transfer; (2) provide the parent, upon request, with a copy of the records transferred, and (3) provide the parent an opportunity for a hearing (45C.F.R. 99.33).

c) Emergency

LEAs may disclose personally identifiable information from a child's educational records to appropriate parties in the case of an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals (45C.F.R. 99.36).

d) Directory Information

An LEA may disclose directory information. Any LEA wishing to designate certain information as "directory" must give notice of the following: (1) the categories of information deemed directory, (2) the right of the parent to refuse to permit the designation of any of the information as directory of any of the information as directory with respect to the student, and (3) the period of time within which the parent must inform the LEA in writing (45C.F.R. 99.37).

STATE

LOCAL

12. Conditions for Disclosure of Personally Identifiable Information

When a child transfers to another school within MCPS, his/her cumulative records are transferred. The transferring school records the name and date of school to which records are transferred. When a child transfers to another district, cumulative records are transferred upon request, and a record is kept of the school to which records are sent. If the request is from the principal of the receiving school, the local school administrator must make a reasonable attempt to notify the parent that the request has been received.

Copies of information in confidential files will not be sent to a private school or a school outside the county without the written request of the parents (MCPS Regulation 545-1).

Information from the confidential folder that is needed in emergency situations involving the public interest may be provided to cooperating agencies in consultation with the principal and/or area director of continuum education (MCPS Regulation 545-1).

With respect to Directory Information and within 30 days following the beginning of each school year, MCPS must give notice of the following: (1) categories of information designated as directory, (2) right of parent to refuse the designation of information as "directory" with respect to the student, and (3) the period of time within which parent must inform MCPS of his/her decision. The maximum period is 45 days (MCPS Regulation 545-1).

FEDERAL	STATE	LOCAL
13. Safeguards a) Part B of EHA LEAs must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of the LEA must assume responsibility for ensuring confidentiality. All persons collecting and using personally identifiable information must receive training regarding rights of privacy. LEAs must maintain, for public inspection, a current listing of the names and positions of employees who may have access (45C.F.R. 121a.572).	13. Safeguards One person must be assigned responsibility regarding compliance with the confidnetiality of records requirements (1978 Maryland Amended Annual Program Plan on p.44).	13. Safeguards A pupil's confidential folder must be kept in a secure place under lock and key, either in or in close proximity to the responsible person's office. The folder may be made available only to authorized individuals. MCPS personnel must maintain a log showing the date and name of individual who requests or is authorized access to the folder and the purpose of the folder review. Confidential folders may not be removed from the immediate area except with written permission. Data in the file must be reviewed annually to determine, among other things, whether the data is current or no longer useful. Psychological evaluations that are no longer useful are sent to the Consulting Psychologist/Team Leader or the Diagnostic and Professional Support Team, who will assure that all copies are destroyed (MCPS Regulation 545-1).
14. Destruction of Records a) Part B of EHA LEAs must inform parents when personally identifiable information is no longer needed. The information must be destroyed at the request of the parents. LEAs may retain information unless the parent requests that it be destroyed. However, a student's name, address, phone number, grades, and grade level completed may be maintained without limitation (45C.F.R. 121a.573). b) Buckley Amendments LEAs may not destroy records if there is an outstanding request to inspect and review them made by the parents. Explanations contained in the records (when parents disagree, see point 11) may not be destroyed as long as the contested record exists. The record of access may not be destroyed as long as the records to which it pertains exist (45C.F.R. 99.13).	14. Destruction of Records LEAs must destroy personally identifiable information within five years after it is no longer needed, following parent permission, if possible. However, a permanent record may be maintained which contains the items listed in the Part B of EHA Regulations. Before destruction, efforts must be made to notify parents of their right to a copy (1978 Maryland Amended Annual Program Plan at p.44-45).	14. Destruction of Records MCPS informs parents when personally identifiable information is no longer needed to provide educational services to the child. The information will be destroyed at the request of the parents. However, permanent records containing the items listed in the Part B of EHA regulations will be maintained without limitation (1979 Application for Assistance under Part B of EHA). Materials from the cumulative folder should not be removed from the education record of a pupil if the parent has a request outstanding to review the record (MCPS Regulation 545-1 on p.5). Data in the confidential file must be reviewed annually, and material that is no longer useful must be removed. Such material must be destroyed in a manner that it cannot be reconstructed and identified with the pupil concerned. Psychological evaluations that are no longer useful are sent to the Consulting Psychologist/Team Leader or Diagnostic and Professional Support Team who will assure that all copies of the report are destroyed (MCPS Regulation 545-1 at p.11).

CHAPTER 4

DUE PROCESS SAFEGUARDS

I. Introduction and Overview of the Legal Mandates

The purpose of this chapter is to (a) describe the federal[1] and state[2] legal mandates pertaining to due process safeguards with respect to the identification, evaluation, placement, and the provision of a free appropriate public education to handicapped children and then to (b) analyze MCPS' compliance with these mandates.

The federal and state legal frameworks include the following 17 separate components of an acceptable system of due process safeguards:

General Obligation
Definitions
Opportunity to Examine Records
Independent Educational Evaluations
Prior Notice
Content of Notice
Informal Placement Conferences
Impartial Due Process
Impartial Hearing Officer
Hearing Rights
Burden of Proof
Finality of Hearing Decision
Administrative Appeal; Impartial Review
Civil Action
Timelines and Convenience of Hearings and Reviews
Child's Status During Proceedings
Surrogate Parents

II. Analysis of MCPS' Documents

A. Introduction

MCPS' policies, procedures, and directives pertaining to due process safeguards are generally described in ACES and more specifically set out in a document entitled "Rules for Procedures for Hearings Before the Montgomery County Board of Education Continuum Education Hearing Officer or Panel."[3]

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[1] The federal mandates are set out in detail in Column 1 on pages 4-5 through 4-21.

[2] The state mandates are set out in detail in Column 2 on pages 4-5 through 4-21.

[3] MCPS' documents pertaining to due process are set out in detail in Column 3 on pages 4-5 through 4-21. See also MCPS Regulation 545-1 pertaining to records.

In general, MCPS' documents pertaining to due process procedures are consistent with federal and state mandates and are sufficiently comprehensive. The areas of consistency and adequacy are not discussed in this chapter. This chapter only discusses problems or potential problems with the due process procedures.

Since this analysis was started, new Rules of Procedure for Impartial Due Process Hearings have been developed by the Office of Continuum Education and are in the process of being reviewed and sent to the Board of Education. Those aspects of the old procedures which are addressed in the following sections have not been changed in the new procedures. Therefore, the issues raised will apply to the new procedures as well.

B. Inadequate Dissemination of Documents

MCPS' due process procedures are inadequately disseminated to school level personnel.

ACES is the primary document used by the county to disseminate to school level personnel procedures concerning the identification, evaluation, placement, and provision of a FAPE to handicapped children. The description of MCPS' due process procedures in ACES outlines some but not all of the components of the system. The components which are addressed contain incomplete descriptions. Further, ACES does not include a reference to the comprehensive statement of procedures set out in the document cited above.

In short, many school-based personnel may be laboring under the misconception that MCPS' procedures pertaining to due process are set out in ACES when, in fact, ACES simply contains a brief overview and the actual procedures are set out in a separate document.

C. Independent Evaluations/Use of Agency Criteria

Part B of EHA regulations contains specific rules governing the use of independent evaluation.[4] MCPS' documentation is consistent with federal and state mandates. However, one standard which is set out in the federal regulations does not appear in MCPS' procedures. The federal standard is that:

> Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.[5]

D. Prior Notice/Consent

Part B of EHA regulations sets out specific standards pertaining to prior notice and consent.[6] One standard is that LEAs must give parents written notice before the LEA proposes or refuses to initiate or change the identification, evaluation, placement, or provision of a FAPE to handicapped children. MCPS' documentation, consistent with state policy, adopts this standard but includes an exception for emergency situations.[7] Under emergency situations, placements may be made without prior notice or consent to protect the health or safety of the child or other persons.

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[4] 45C.F.R. 121a.503.

[5] 45C.F.R. 121a.503.(e)

[6] 45C.F.R. 121a.504.

In the authors' opinion, the state and local procedure is reasonable and should be construed as consistent with federal law. However, since the literal terms of the federal mandate do not provide for exceptions, MCPS and/or the state should consider seeking a policy interpretation from BEH.

A second point concerning prior notice and consent involves the procedure under which MCPS should proceed when a parent refuses consent. State policy is that the LEA must use the due process hearing procedures when parental consent is not given.[8] MCPS' documents do not address this issue.

E. Content of Notice

Federal law specifies minimum standards which notices must satisfy.[9] Although state and local documents[10] satisfy most of these standards, they do not contain standards governing the provision of notice to a person whose primary mode of communication is not a written language. Part B of EHA provides that:

1. The notice must be written in language understandable to the general public and provided in the native language or mode of communication used by the parent, where feasible.

2. If the parent's native language or mode of communication is not a written language, the LEA must take steps to ensure that the notice is translated orally to the parent in his or her native language or mode of communication, that the parent understands the content of the notice, and that there is written evidence that these conditions have been satisfied.[11]

F. Hearing Rights

Part B of EHA regulations sets out minimum standards concerning the actual hearing.[12] Although state and local procedures are generally consistent with federal policy, one state provision, which has been adopted by MCPS, may be inconsistent. The federal policy in question provides that any party to a hearing has the right to obtain a written or electronic verbatim record of the hearing.[13] State[14] and local[15] procedures provide that the record will be made available at actual cost. The question that needs clarification is whether the federal policy requires that the records be made available at no cost to the parents.

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[7] State Bylaw 13.04.01.07A (2) and MCPS Documentation pages 4-8 through 4-10.
[8] State Bylaw 13.04.01.07A (3)
[9] 45C.F.R. 121a.505
[10] State Bylaw 13.04.01.07A (4) and MCPS Documentation pages 4-8 through 4-10.
[11] 45C.F.R. 121a.505 (b) and (c)
[12] 45C.F.R. 121a.508.

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[13] Ibid.

[14] State Bylaw 13.04.01.07A (7) and (8).

[15] MCPS "Rules for Due Process Procedures" on J3.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphrased from the sources.

Due Process Safeguards

FEDERAL	STATE	LOCAL
1. General Obligation LEAs must establish and implement procedural safeguards which meet the requirements contained in the Part B of EHA and 504 regulations (45C.F.R. 121a. 237 and .501; 45C.F.R. 84.36).	1. General Obligation (13.04.01.07A(1) and (12)) Each local education agency must cooperate with parent(s) or guardian(s), or both, of handicapped children who are enrolled in or are in need of special education programs in all matters pertaining to the education and welfare of the child and in the full evaluation and exploration of educational placements for the child. Each board of education shall develop hearing procedures which, at a minimum, meet the requirements of these regulations and of appropriate federal regulations. If local procedures are not established within 60 days of the effective date of these regulations, these regulations and appropriate federal regulations shall apply directly in lieu of locally adopted procedures and until these procedures are adopted in accordance with these regulations.	1. General Obligation These procedures are established by the Montgomery County Board of Education in accordance with the Bylaws of the Maryland State Board of Education to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to their right to free appropriate public education. They are effective whenever a request is made in writing to review the identification, evaluation, or educational placement of the child. (Rules for Procedures for Hearings Before the Montgomery County Board of Education Continuum Education Hearing Officer or Panel.)
2. Definitions (45C.F.R. 121a.500) a) Consent "Consent" means that: (a) The Parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communications; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.	2. Definitions	2. Definitions

FEDERAL	STATE	LOCAL
b). Evaluation "Evaluation" means procedures used in accordance with 121a.530-121a.534 of the Part B of EHA regulations (see Chapter 5), to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class. c). Personally Identifiable "Personally identifiable" means that information includes: (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; (d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.		
3. Opportunity to examine Records (45C.F.R. 121a.502) The parents of a handicapped child must be afforded an opportunity to inspect and review all education records with respect to: (a) The identification, evaluation, and educational placement of the child (b) The provision of a free appropriate public education to the child	3. Opportunity to examine Records (13.04.01.07A (5)) Parent(s) or guardian(s) must have the right to inspect and copy at reasonable times, both before any hearing and otherwise, all records of the local educational agency pertaining to the child, including all tests or reports upon which the proposed action may be based and such other relevant records pertaining to the proposed action as the school may deem relevant.	3. Opportunity to examine Records Parent(s) or guardian(s) shall have the right to inspect and copy at reasonable times, both before any hearing and otherwise, all records of the local education agency and its agents and employees pertaining to the child, including all tests or reports upon which the proposed action may be based and such other relevant records pertaining to the proposed action as the school system may deem relevant. (D)

FEDERAL

4. Independent Educational Evaluations
(45C.F.R. 121a.503)

a) General standard

The parents of a handicapped child have the right to obtain an independent educational evaluation of the child, subject to paragraphs b) through e).

Each public agency must provide to parents, on request, information about where an independent educational evaluation of the child in question may be obtained.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

"Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

b) Parent right to evaluation at public expense

A parent has the right to an independent educational evaluation at public expense, if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an indedepent educational evaluation, but not at public expense.

c) Parent initiated evaluations.

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child

(2) May be presented as evidence at a hearing under this subpart regarding that child

STATE

4. Independent Educational Evaluations
(13.04.01.07A(7))

Parent(s) or guardian(s) have the right to obtain an independent assessment of the child, the expense of which is to be borne in accordance with applicable federal regulations. Parent(s) or guardian(s) also have the right to obtain an independent assessment at private expense. The results must be considered by the local education agency in any placement decision and may be presented as evidence at a due process hearing.

The local education agency must provide to parents, on request, information about where an independent assessment may be obtained.

The Hearing Officer or panel may request an independent assessment which shall be at public expense.

LOCAL

4. Independent Educational Evaluations

Parent(s) or guardian(s) shall have the right to obtain an independent assessment of the child, the expense of which is to be borne in accordance with applicable State and Federal Regulations. Parent(s) or guardian(s) shall also have the right to obtain an independent assessment at private expense. The results of these assessments must be considered by the Montgomery County Public Schools in any placement decision and may be presented as evidence at a hearing under these rules. (F1)

The Montgomery County Public Schools shall provide to parents, on request, information about where an independent assessment may be obtained. (F2)

The Hearing Officer or panel may request an independent assessment which shall be at public expense. (K)

FEDERAL

d) Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

e) Agency criteria

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

5. Prior Notice; Parent Consent (45C.F.R.121a.504)

a) Notice

Written notice must be given to the parents of a handicapped child a reasonable time before the LEA:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child

b) Consent

Parental consent must be obtained before:

(1) Initial placement of a handicapped child in a program providing special education and related service

(2) Except for preplacement evaluation and initial placement, consent may not be

STATE

5. Prior Notice; Parent Consent (13.04.01.07A(2) and (3))

The local education agency through responsible officials must provide notice to the parent(s) or guardian(s) of a child in writing, which must be in the parent's or guardian's primary language (other than English if necessary and feasible), either delivered personally or mailed by first class mail, postage prepaid, directed to their address as shown on the records of the school system. Notice and consent by the parent(s) or guardian(s) are required before initiating assessment procedures, before initial placement of a child in a program providing special education and related services, and before transferring a child from one program of special education to another significantly different program. Notice is also required in any other case in which the local education agency:

a) Proposed to initiate or change

b) Refuses a request by parent(s) or guardian(s) to initiate or change the identification, evaluation, or educational placement of the child or the

LOCAL

5. Prior Notice; Parent Consent

The superintendent of schools or his designee shall provide notice to parent(s) or guardian(s) of a child in writing, which shall be in the parent's or guardian's primary language (other than English if necessary and feasible) either delivered personally or mailed by first class mail, postage prepaid, directed to their address as shown on the records of the school system in the following circumstances:

(1) Except in emergency situations, notice and consent by the parent(s) or guardian(s) are required:

a. Before initiating assessment procedures

b. Before initial placement of a child in a program providing special education and related services

c. Before transferring a child from one program of special education to another significantly different program

(2) Notice is also required in any other case in which the Montgomery County Public Schools:

a. Proposes to initiate a change

FEDERAL	STATE	LOCAL
required as a condition of any benefit to the parent or child If a child, who has been initially placed in a special education program by school district A, after requisite parental consent has been obtained, enrolls in school district B, parental consent need not be obtained prior to continuing the same placement in school district B. However, school district B must schedule an IEP meeting and parents may exercise their due process rights if dissatisfied with the results of the meeting (letter from Tyrrell to Small (January 4, 1978). c) Procedures Where Parent Refuses Consent Where state law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures to determine if the child may be evaluated or initially provided special education and related services without parental consent. If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent.	provision of a free appropriate education for the child. The notice required by Section 2 must be mailed at least 20 calender days in advance of the proposed action except in emergency situations, where, in the opinion of one or more local school officials at the principal level or higher, immediate implementation of a proposed placement action is necessary to protect the health or safety of the child or of other persons. In emergency situations, the notices must be furnished as soon as possible but not later than the second school day following the placement action. A hearing will be scheduled within 20 calendar days, when requested by the parent(s) or guardian(s). The schedule for the decision and implementation must be ih accordance with 13.04.01.07A(9) (see below). When parents refuse to consent before a handicapped child is evaluated or initially provided special education or related services, the LEA shall use the hearing procedures in determining if the child may be evaluated or initially provided special education or related services without parental consent.	b. Refuses a request by a parent(s) or guardian(s) to initiate a change of the identification, evaluation, or educational placement of a child or the provision of a free appropriate education for the child. (3) The notices required by these Rules shall be mailed at least 20 calendar days in advance of the proposed action except in emergency situations. a. In emergency situationq, the notices shall be furnished as soon as possible but not later than the second day following the placement action. A hearing will be scheduled within 20 calendar days, days, when requested by the parent(s) or guardian(s) (C).
6. Content of Notice (45C.F.R. 121a.505)6. a) The notice must include: (1) A full explanation of all of the procedural safeguards available to the parents (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected (3) A description of each evaluation procedure, test, record, or report the	Content of Notice (13.04.01.07A(4)) The notice of the proposed placement action required by these regulations shall contain the following: a) A description of the proposed action and its effective date b) A clear and concise statement of the reasons for the proposed action and a listing of any other possible appropriate actions, and a description of the records used as a basis for the decision c) A statement that the parent(s) or guardian(s) have the right to be heard with	6. Content of Notice The notice of the proposed placement action required by these regulations shall contain the following: a) A description of the proposed action and its effective date b) A clear and concise statement of the reasons for the proposed action, a listing of any other possible appropriate actions, and a description of the records used as a basis for the decision c) A statement that the parent(s) or guardian(s) have the right to be heard with

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agency uses as a basis for the proposal or refusal (4) A description of any other factors which are relevant to the agency's proposal or refusal b) The notice must be: (1) Written in language understandable to the general public (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so c) If the native language or other mode of communication of the parent is not written language, the state or local educational agency shall take steps to insure: (1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication (2) That the parent understands the content of the notice (3) That there is written evidence that the requirements in Paragraph c) (1) and (2) of this section have been met.	regard to the proposed action by the person or persons designated as responsible for conducting the hearing d) A description of the procedures for requesting this hearing, including an explanation that this hearing may be requested e) A general statement of the procedures applicable to these hearings, including specific reference to the rights afforded by this regulation, and statement that a complete copy of these regulations may be obtained at the local education agency office	regard to the proposed action by the person or persons designated as responsible for conducting the hearing d) An explanation that a hearing may be requested, including a form for requesting a hearing. e) A general statement of the procedures applicable to these hearings, including specific reference to the rights afforded by these rules and a statement that a complete copy of these rules may be obtained at the Montgomery County Public Schools office (C4). The notice must be in the parent's or guardian's primary language (other than English if necessary and feasible) (see Point 5 above).
7. Informal Placement Conferences Comment: Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. In many cases mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart. 42FR42495 (August 23, 1979)	7. Informal Placement Conferences (13.04.01.17A (2)) Except in emergency situations governed by Section A, 2, the parent(s) or guardian(s) who so requests shall be given the opportunity to participate in an informal placement conference at a time before the implementation of any porposed placement action. These conferences may be scheduled either before or after formal notice is issued. In emergency situations governed by Section A, 2, an opportunity to participate in an informal conference immediately following the implementation of any emergency proposed placement action shall be afforded to the parent(s) or guardian(s). This requirement of an opportunity to consult should not be interpreted as inhibiting or discouraging earlier or more frequent consultations.	7. Informal Placement Conferences The parents or guardians who so request shall be given the opportunity to participate in an informal placemet conference at a time before the implementation of any proposed action. These conferences may be scheduled either before or after formal notice is issued. These conferences are not required in emergency situations where, in the opinion of one or more local school officials at the principal level or higher, immediate implementation of a proposed placement action is necessary to protect the health or safety of the child or other persons. In an emergency situation, the opportunity to participate in an informal conference immediately following the implementation of an emergency proposal placement action shall be afforded to the parent(s) or guardian(s). This requirement of an opportunity to consult should not be interpreted as inhibiting or discouraging earlier or more frequent consultations (b).

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8. Impartial Due Process Hearing (45C.F.R. 121a.506)

a) Who May Initiate Hearing/Scope of Hearing

A parent or a public educational agency may initiate a hearing on any of the matters described above under Point 5a). Under Section 504, only a parent (and not the LEA) has the right to initiate a hearing, 45C.F.R. 84.36.

b) Who Must Conduct the Hearing

The hearing must be conducted by the state educational agency or the public agency directly responsible for the education of the child, as determined under state statute, state regulation, or a written policy of the state educational agency.

c) Informing Parents of Low Cost Legal Representation

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information

(2) The parent or the agency initiates a hearing under this section

Due process hearing procedures are to be used when parents and the LEA disagree on identification, evaluation, placement, or service needs of a child and NOT to remedy noncompliance complaints, e.g., failure to explain rights or deliver services listed in the IEP (letter from Tyrrell to McKeever (August 4, 1978)).

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8. Impartial Due Process Hearing

The local education agency shall establish and implement hearing procedures when a request is made in writing to review the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

The local educaton agency shall inform the parent of any free or low cost legal or other relevant services available in the area.

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8. Impartial Due Process Hearing

(See Points 1., 5., 9., and 10.)

The Montgomery County Public Schools shall inform the parent of any free or low cost legal or other relevant services available in the area (F3).

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9. **Impartial Hearing Officer** (45C.F.R. 121a.507) A hearing may not be conducted: (1) By a person who is an employee of a public agency which is involved in the education or care of the child (2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. School Board members may not serve as impartial hearing officers for cases involving children residing in their jurisdiction (43FR36034 (August 14, 1978)).	9. **Impartial Hearing Officer** (13.04.01.07A(7)) A person who was directly responsible for the recommendation of the proposed action or who has furnished significant advice or consultation in reference to the recommendation may not serve as a hearing officer or member of a hearing panel. The hearing officer, or persons included on the hearing panel, must be knowledgeable in the fields and areas of significance to the educational review of the child. A hearing conducted pursuant to these regulations may not be conducted by the school board or by an individual who is an employee of the agency involved in any capacity other than as a hearing officer or who has any interest conflicting with objectivity. All persons who qualify to conduct hearings shall be listed on a roster maintained and monitored by the Maryland State Board of Education and shall include the qualifications of each hearing officer (1979 State Plan).	9. **Impartial Hearing Officer** Hearings will be conducted by an independent hearing officer or a panel selected from a list approved by the Board. A person who was directly responsible for the recommendation of the proposed action or who has furnished significant advice or consultation in reference to the recommendation may not serve as a hearing officer or member of a hearing panel. The hearing officer shall be knowledgeable in the fields and areas of significance to the educational review of the child. A hearing conducted pursuant to these rules may not be conducted by Montgomery County Board of Education involved in any capacity other than a hearing officer or who has any interest conflicting with objectivity. The hearing shall be conducted by a hearing officer unless a panel is requested by one of the parties, in which event the ombudsman shall determine whether a panel will be selected having due regard for the costs involved and the significant of the case. (G.1., 2., 3.) The Ombudsman shall select the hearing officer or panel members from the list approved by the Board (G4).
10. **Hearing Rights** (45C.F.R. 121a.508) Any party to a hearing has the right to: (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing (4) Obtain a written or electronic verbatim record of the hearing (5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory panel established under Subpart F.)	10. **Hearing Rights** (13.04.01.17A(7) and (8)) Hearings shall be conducted in accordance with the following minimum requirements: a) Parent(s) or guardian(s) shall have the opportunity to present competent and relevant evidence, including but not limited to the results of independent assessment, both in documentary form and through witnesses. The local education agency shall not be required to bear the responsibility for any fees which may be charged for evaluations or representation except as provided in these regulations and applicable federal law and regulations and locally established policy. b) Procedures shall be adopted affording parent(s) or guardian(s) the opportunity to require the attendance and testimony of employees of the local education agency who may have direct knowledge pertinent to the subject of the inquiry.	10. **Hearing Rights** Both parent(s) or guardian(s) and Montgomery County Public Schools shall have the responsibility to exchange with the other at least five working days prior to the hearing all written evidence which it intends to introduce at the hearing. The parties shall confer prior to the hearing in a good faith attempt: a) To stipulate facts b) Regarding the introduction of evidence for the purpose of expediting the hearing and reducing the hearing costs (H2). Parties shall have the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least five days before the hearing (H3). Notice and Scheduling of Hearings The ombudsman shall assign to cases hearing officers and panel members who will

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Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present

(2) Open the hearing to the public

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In requiring employees to testify, parties to the hearing shall give consideration to minimizing interference with the regular duties of employees.

c) Parent(s) or guardian(s) shall be be afforded the opportunity to question witnesses called by the local education agency.

d) The hearing shall be closed unless the parent(s) or guardian(s) requests that the hearing be open. All persons present shall be identified for the record at the initiation of the hearing. Parents have the right to have their child attend.

e) The local education agency shall arrange for a tape recording or other record of the hearing unless all parties agree that this record need not be made. Tape recordings or written records shall be made available upon request to parent(s) or guardian(s) appealing the decision at no more than the actual cost of duplication.

f) The decision of the hearing officer or panel shall be based on the testimony and documented information on the record at the hearing before the hearing officer.

g) Parties shall have the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least five days before the hearing. Additionally, parents involved in the hearings shall be afforded the right to have the child who is subject to the hearing present, shall be afforded the opportunity of an open hearing, and may have the child present.

After a hearing has been requested and held in the manner provided, the parent(s) or guardian(s) or, upon request, their counsel or representative of record shall be informed in writing of the final decision, including a statement of the findings and conclusions upon which it is based. The findings and conclusions in any placement decision shall a) specify the nature and severity of any handicaps the child has, b) any special educational needs the child has as a result of those handicaps, and c) any modificaion of the child's individualized education program required to provide the child with an appropriate

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then schedule hearings. The associate superintendent for continuum education shall send written notice of the hearings to all interested parties including the ombudsman. Such notice shall state the date, time, and place of the hearing. The associate superintendent for continuum education shall arrange for a tape recording or other appropriate record of the hearing or the parties may agree that no record be made (11).

The hearing officer or chairperson of the panel shall be the presiding officer at the hearing and shall have full discretion to rule on all procedural matters and questions of evidence presented at the hearing consistent with obtaining that information necessary to make a proper decision under the state bylaws in the child's best interest. Hearings shall be conducted informally, and the hearing officer or chairperson of a panel shall not be bound by the strict rules of evidence but shall consider the evidence and testimony relevant to the issues at the hearing. The hearing officer or chairperson of the panel shall have the sole discretion to determine the necessity for competency of or relevancy of the testimony of any witness appearing at a hearing (13).

Hearings held pursuant to these rules shall be conducted as follows:

a) Parent(s) or guardian(s) shall have the opportunity to present competent and relevant evidence, including but not limited to the results of independent assessment, both in documentary form and through witnesses. The Montgomery County Public Schools shall not be required to bear the responsibility for any fees which may be charged for evaluations or representation except as provided by law.

b) Montgomery County Public Schools Witnesses:

(1) Parent(s) or guardian(s) shall have the opportunity to require the attendance and testimony of Montgomery County Public Schools employees who may have direct knowledge pertinent to the subject to the inquiry.

(2) In requiring Montgomery County Public School employees to testify, the parties to the hearing shall give consideration to minimizing the interference with the regular duties of of employees.

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	program to meet those needs, pursuant to Section A,6, b) and d) shall identify a placement that will provide the child with the required appropriate program. The parent(s) or guardian(s) or their counsel or representative shall also be informed of their right to appeal and the procedure for taking that appeal to the next highest authority.	(3) Requests for Montgomery County Public School employees to testify shall be made to the Office of the Associate Superintendent for Continuum Education at least seven working days prior to the hearing. Any requests made for Montgomery County Public Schools employees to testify on less than seven working days prior to the hearing shall be approved by the hearing officer only for good cause. c) Both parties shall be afforded the opportunity to question witnesses by the other party. d) The hearing shall be closed unless the parent(s) or guardian(s) requests that the hearing be open. All persons present shall be identified for the record at the initiation of the hearing. Parents have the right to have their child attend. e) Tape recordings or written records shall be made available upon request to parent(s) or guardian(s) appealing the decision at no more than the actual cost of duplication. f) The decision of the hearing officer or panel shall be based on the testimony and documented information on the record at the hearing before the hearing officer or panel (J3). Parent(s) or guardian(s) shall have the right to be represented by counsel or other individuals at any stage during the hearing process (E). After a hearing has been requested and held in the manner provided, the parent(s) or guardian(s) or, upon request, their counsel or representative of record shall be informed in writing of the final decision, including a statement of the findings and conclusions upon which it is based. The findings and conclusions in any placement decision shall a) specify the nature and severity of any handicaps the child has; b) any special educational needs the child has as a result of those handicaps; c) any modification of the child's individualized education program required to provide the child with an appropriate program to meet those needs; and d) shall identify a placement that will provide the child with the required appropriate program (L1).

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11. Burden of Proof	11. Burden of Proof (13.04.01.17A(7)(h)) It shall be the initial responsibility of the party proposing any action to present evidence which supports its appropriateness. Evidence opposing the action shall then be presented. The responsibility for explaining the initial placement recommendation shall be upon the local education agency. A placement shall be deemed appropriate if it provides special education and related services which are provided at public expense, under public supervision and direction, and without charge; meets the standards of the state educational agency; is provided in conformity with the individualized education program; meets the educational needs of the child; and cannot be provided in any significantly less restrictive programs which would satisfy these needs equally well.	11. Burden of Proof It shall be the initial responsibility of the party proposing any action to present evidence which supports its appropriateness. Evidence opposing the action shall then be presented. The responsibility for explaining the initial placement recommendation shall be upon the local education agency. A placement shall be deemed appropriate if it provides special education and related services which are provided at public expense, under public supervision and direction, and without charge; meets the standards of the state educational agency; is provided in conformity with the individualized education program; meets the educational needs of the child; and cannot be provided in any significantly less restrictive programs which would satisfy these needs equally well.
12. Finality of the Hearing Decision (45C.F.R. 121a.509) A decision made at a hearing is final unless a party to the hearing appeals the decision.	12. Finality of the Hearing Decision (See below under Point 13.) The decision of the hearing officer or panel shall be implemented as soon as possible, but in no event sooner than fourteen school days and not later than thirty days after the decision (1979 State Plan).	12. Finality of the Hearing Decision (See Point 16.)
13. Administrative Appeal; Impartial Review If the hearing is conducted by a public agency other than the state educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the state educational agency. If there is an appeal, the state educational agency shall conduct an impartial review of the hearing. The official conducting the review shall: (1) Examine the entire hearing record (2) Insure that the procedures at the hearing were consistent with the requirements of due process (3) Seek additional evidence if necessary (If a hearing is held to receive additional evidence, the rights described above under Point 10 apply.)	13. Administrative Appeal; Impartial Review (13.04.01.17B) When all local procedures for providing special education programs for a handicapped child by the local education agency have been exhausted, the local education agency or the parent(s) or guardian(s) of the child may request in writing from the State Board of Education a review of the case as it relates to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. Any such request for a review shall occur within three calendar days of the final decision of the local school system. Hearings regarding State Department of Education approval of nonpublic placements shall initiate at the state level.	13. Administrative Appeal; Impartial Review The parent(s) or guardian(s) or their counsel or representative shall also be informed of their right to appeal and the procedure for taking that appeal to the next highest authority (Li). Appeals by a party to a Decision and Order of a hearing officer or panel shall be made in writing within thirty days of the Decision to the State Board of Education at the following address: Assistant Superintendent, Division of Special Education, Maryland State Board of Education, International Tower Building, 857 Elkridge Landing Road, Linthicum Heights, Maryland 21240 (M).

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(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official

(5) Make an independent decision on completion of the review

(6) Give a copy of written findings (The decision made by the reviewing official is final unless a party brings a civil action.)

Comment

(1) The state educational agency may conduct its review either directly or through another state agency acting on its behalf. However, the state educational agency remains responsible for the final decision on review.

(2) All parties have the right to continue to be represented by counsel at the state administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Section 121a.508 relating to hearings also apply.

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Requests for these hearings shall be made within 30 days following the decision of the State Department of Education. In cases which initiate at the state level, contents of notice requirements shall be as described in .07A3. The procedure established here shall be administered by the State Department of Education.

Upon receipt of a written request for review, the State Department of Education shall provide an official application to the parent(s) or guardian(s) or local education agency.

Review Hearing

a) The decision of the State Hearing Review shall be rendered not later than 30 days after the receipt of the official application and supporting documents, including all education records of the child. A hearing or review officer may grant specific extensions of time beyond the 30-day period but in no instance may the time be extended beyond 60 days.

b) The notice of the hearing shall include the time, date, and place at which the review hearing will occur.

Parent(s) or guardian(s) shall have the right to inspect and copy, at reasonable times, all records of the state and local education agency, its agents, and employees pertaining to the child, including all documents which will be considered by the Hearing Review Board.

Parent(s) or guardian(s) shall have the right to be represented by counsel or other individual(s) at any stage during the hearing process.

The hearing shall be closed unless the parent(s) or guardian(s) requests that the hearing be open. Persons present at the request of the parent(s) or guardian(s) or the local board of education shall be identified at the initiation of the hearing. Parents have the right to have their child attend.

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14. Civil Action (45C.F.R. 121a.511) Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Section 121a.510 of this subpart and any party aggrieved by the decision of a reviewing officer under Section 121a.510 has the right to bring civil action under Section 615(e)(2) of the Act.	14. Civil Action	14. Civil Action
15. Timelines and Convenience of Hearings and Reviews (45C.F.R. 121.512) The public agency must insure that not later than 45 calendar days after the receipt of a request for a hearing: (1) A final decision is reached in the hearing (2) A copy of the decision is mailed to each of the parties The state educational agency must insure that not later than 30 calendar days after the receipt of a request for a review: (1) A final decision is reached in the review (2) A copy of the decision is mailed to each of the parties A hearing or reviewing officer may grant specific extensions of time beyond the periods set out above at the request of either party. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.	15. Timelines and Convenience of Hearings and Reviews (13.04.01.07A(8)) The hearing shall be held and the decision shall be made and written notice thereof provided within 45 calendar days from the request for the hearing. The hearing officer may grant an extension beyond this time period at the request of either party, but the time may not be extended beyond 60 days. All hearings and reviews involved in oral arguments shall be conducted at a time and place which is reasonably convenient to the parent and child involved (1979 State Plan).	15. Timelines and Convenience of Hearings and Reviews A request for a formal review hearing shall be initiated by filing a written request for review with the Board of Educaton, Office of the Ombudsman and Staff Assistant to the Board of Education (ombudsman), within thirty days from the Montgomery County Public Schools' final placement decision (H1). The hearing shall be held, the decision shall be made, and written notice thereof provided within 45 calendar days from the request for the hearing. The hearing officer may grant an extension beyond this time period at the request of either party, but the time may not be extended beyond sixty days (L1).
16. Child's Status During Proceedings (Desciplinary Procedings) (45C.F.R. 121a.513) a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.	16. Child's Status During Proceedings (Desciplinary Procedings) (13.04.01.07A(9)(10), and (11)) When a hearing is requested by parent(s) or guardian(s) concerning a proposed placement action and the child is at the time enrolled in a free educational program, the LEA may not effect any change in the child's placement status without the consent of the parent(s) or guardian(s) or pursuant to a decision of the hearing determined in accordance with the State Board of Education Bylaws. The decision of the hearing officer or panel shall be implemented as soon as possible but in any event within no sooner than 14	16. Child's Status During Proceedings (Desciplinary Procedings) When a hearing is requested by parent(s) or guardian(s) concerning a proposed placement action and the child is at the time enrolled in a free educational program, the Montgomery County Public Schools may not effect any change in the child's placement status without the consent of the parent(s) or guardian(s) or pursuant to a decision of the hearing determined in accordance with the State Board of Education Bylaws. The decision of the hearing officer or panel shall be implemented as soon as possible but in any event within no sooner than 14 school days nor later than 30 school days

Comment

Section 121a.513 does not permit a child's placement to be changed during a complaint proceeding unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

school days nor later than 30 school days after the decision provided that during the pendency of appeals pursuant to Regulation .07B(2), and .07B(11), below, unless the state or local education agency and the parent(s) or guardian(s) otherwise agree, the child shall remain in the then current educational placement of the child.

When a hearing is requested concerning a proposed placement action and the child is not currently receiving free educational services, the child shall be placed immediately if the parents consent; and a special expedited hearing schedule shall apply. In these cases, the hearing shall be held within 20 calendar days of the request thereof; a written decision shall be issued within 15 calendar days of the hearing; and the decision shall be implemented within 15 school days of the decision unless specifically stayed pending appeal or otherwise by the hearing officer or panel provided that during the pendency of appeals pursuant to Regulation .07B(2) and .07B(11), below, the local education agency and the parent(s) or guardian(s) otherwise agree, the child shall remain in his or her then current educational placement; or, if the child is not yet receiving free educational services either because the parents did not consent to the immediate placement pursuant to this subsection (10) or for any other reason, the child shall be placed in the local public school program until all these appeals have been concluded, if the parent(s) or guardian(s) consents.

In any disciplinary case initially deemed to warrant suspension or expulsion pursuant to Title 7, Section 304 of the Education Articles, Public School Laws of Maryland, if credible evidence is presented as a result of the investigation provided for in Title 7, Section 304 of the Education Article Public School Laws of Maryland to the local education agency indicating that the child may be handicapped and eligible for placement in a special education program, an evaluation of this child shall be initiated within ten school days thereafter at the direction of the local education agency. An independent evaluation may be obtained by

after the decision provided that during the pendency of appeals pursuant to State Board of Education Bylaws, unless the State or Montomgery County Public Schools and the parent(s) or guardian(s) otherwise agree, the child shall remain in the then current educational placement of the child (L2.

When a hearing is requested concerning a proposed placement action and the child is not currently receiving free educational services, the child shall be placed immediately if the parents consent; and a special expedited hearing schedule shall apply. In these cases, the hearing shall be held within 20 calendar days of the request thereof; a written decision shall be issued within 15 calendar days of the hearing; and the decision shall be implemented within 15 school days of the decision unless specifically stayed pending appeal or otherwise by the hearing officer or panel provided that during the pendency of appeals pursuant to State Board of Education Bylaws, unless Montgomery County Public Schools and the parent(s) or guardian(s) otherwise agree, the child shall remain in his or her then current educational placement; or, if the child is not yet receiving free educational services either because the parents did not consent to the immediate placement pursuant to this subsection or for any other reason, the child shall be placed in the Montgomery County Public Schools until all these appeals have been concluded, if the parent(s) or guardian(s) consents (L3).

In any disciplinary case initially deemed to warrant suspension or expulsion pursuant to Section 7-304 of the Education Article, Public School Laws of Maryland to the Montgomery County Public Schools indicating that the child may be handicapped and eligible for placement in a special education program, an evaluation of this child shall be initiated within ten school days thereafter at the direction of the Montgomery County Public Schools. An independent evaluation may be obtained by the parent(s) or guardian(s) of the child at their own expense. These evaluations shall be considered by the Admission, Review and Dismissal Committee. If it is established

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	the parent(s) or guardian(s) of the child at their own expense. These evaluations shall be considered by the Admission, Review, and Dismissal Committee. If it is established that the child is handicapped and that the handicapping condition was a significant cause of the behavior which prompted the disciplinary action, then any suspension or expulsion shall be reconsidered forthwith and further action with regard to placement of the child shall be considered and taken in accordance with these regulations. In all other respects, neither the provisions of .17,A.,3,9,10 thereof relative to the implementation of proposed placement actions in emergency situations, nor the aforegoing, shall affect the continuing effectiveness of any action properly taken in the disciplinary proceedings pursuant to Title 7, Section 304 of the Education Article Public School Laws of Maryland, pending further action with regard to possible placement in a special education program in accordance with these regulations.	that the child is handicapped and that the handicapping condition was a significant cause of the behavior which prompted the disciplinary action, then any suspension or expulsion shall be reconsidered forthwith; and further action with regard to placement of the child shall be considered and taken in accordance with these regulations. In all other respects, neither the provisions of the State Board Bylaws relative to the implementation of proposed placement actions in emergency situations, nor the aforegoing, shall affect the continuing effectiveness of any action properly taken in the disciplinary proceedings pursuant to Section 7-304 of the Education Article Public School Laws of Maryland, pending further action with regard to possible placement in a special education program in accordance with State Board of Education Bylaws (L4).
17. Surrogate Parents (45C.F.R. 121a.514) a) General. Each public agency must insure that the rights of a child are protected when: (1) No parent can be identified (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent (3) The child is a ward of the state under the laws of that state b) Duty of public agency. The duty of a public agency includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent and (2) for assigning a surrogate parent to the child. c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under state law. (2) Public agencies shall insure that a person selected as a surrogate: (i) Has no interest that conflicts with the interests of the child he or she represents	17. Surrogate Parents (Draft Policy) I. Qualifications of Surrogate A person qualified as a surrogate parent: A. Is a citizen of the U.S. above the age of 21 B. Has knowledge, skills, experience, and/or training that ensures adequate representation of the child C. Is a nonemployee of a public agency involved in the educational care of the child D. Is able to understand and speak in the language of the child E. Has no interest that conflicts with the interest of the child he or she represents F. Holds a Maryland State Department of Education Surrogate Parent Certificate II. Duties of Surrogate Parents: To duly represent a child in all matters relating to: A. Identification B. Evaluation C. Educatonal placement D. The provision of a free appropriate public education	17. Surrogate Parents 1. Each year between July 1 and September 15, the superintendent of schools shall notify in writing the established special education interest groups and the Montgomery County Public Schools staff of Section 8-414 of the Education Articles and the Maryland State Department of Education guidelines regarding surrogate parents. This notice shall include but not be limited to: a) Qualifications of a surrogate parent b) Duties of a surrogate parent c) Selection and appointment procedures d) Time of appointment e) Compensation f) Removal g) Replacement h) Liability 2. The due process section of the Access to Continuum Education (ACES) will be amended to include the requirements and guidelines concerning parents. 3. Individual citizens and public and/or private groups, as well as MCPS staff, shall make known to the associate superintendent for continuum education any student in need of a surrogate parent.

FEDERAL

(ii) Has knowledge and skills that insure adequate representation of the child

d) Nonemployee Requirements: Compensation

A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

e) Responsibilities

The surrogate parent may represent the child in all matters related to:

(1) The identification, evaluation, and educational placement of the child

(2) The provision of a FAPE to the child

STATE

III. Selection/Appointment Procedures:

A. When a local superintendent of schools or a designee finds that a child may require special education and the child is a ward of the state or the child's parent or guardian is unknown or unavailable, that superintendent or a designee shall request in writing that the State Board appoint a surrogate parent to represent the child in the educational decision-making process.

B. The request to the State Board shall include the child's name, date of birth, sex, domicile and residence, a statement explaining why the child meets the criteria for the appointment of a surrogate parent, documentation of efforts made to locate the parent if unknown, or the parent's present location if available, and the name and qualifications of a proposed surrogate parent deemed appropriate to represent the child in the educational decision-making process.

C. The State Board shall appoint a surrogate parent within ten days after receipt of the initial request.

D. If the State Board finds that the proposed surrogate parent is not qualified to serve as defined in these regulations, it shall request that the Local Board make another nomination within five days or it may select and appoint one itself. Final selection shall be within ten days of a request by the Local Board.

E. Any person aggrieved by a decision of the State Board with regard to the selection and appointment of a surrogate parent may seek review of the decision in a court of competent jurisdiction.

IV. Time of Appointment:

Surrogate parents shall be appointed to serve until:

A. The child's natural parents are available

or

B. The child's natural parents are known

or

C. The child completes elementary or secondary programs

or

D. The child reaches the age of 21

LOCAL

4. The associate superintendent for continuum education will convene a staff committee to verify the need.

5. Students in need of surrogate parents will be made known to the state superintendent for instruction by the superintendent in accordance with the prescribed procedures for selection and appointment of surrogate parents.

V. Training of Surrogates:

All persons appointed by the Maryland State Board of Education shall have the opportunity of being trained by the Maryland State Department of Education, Division of Special Education. This training shall ensure that appointees are knowledgeable in all areas relative to P.L. 94-142 and specifically in the areas deemed as duties of a surrogate parent. A certificate of training shall be awarded by the Maryland State Department of Education.

VI. Compensation:

All surrogate parents shall be compensated in accordance with LEA policies relating to consultants or part-time employees of that system. No surrogate parent shall be penalized or suffer for loss of wages in accepting this assignment.

VII. Removal:

Persons appointed by the State Board of Education upon recommendation of the local superintendent of schools as surrogate parents may be terminated upon recommendation from the local superintendent or a designee to the Board when documented evidences indicate incompetence, negligence, breach of fiduciary duties, conflict of interest, and/or violation of the Local Dismissal Code regarding staff firing.

VIII. Replacement:

Request for replacement for persons who resign, expire, and/or are removed from the appointed position as surrogate parent shall follow the procedure cited in this document in Section III. A through E.

CHAPTER 5

EVALUATION AND PLACEMENT

I. Introduction

The failure to provide handicapped persons with an appropriate education frequently occurs as a result of misclassifications and misplacements.[1] The federal[2] and state[3] legal frameworks establish procedures designed to ensure that children are not misclassified, unnecessarily labeled as handicapped, or incorrectly placed based on inappropriate selection, administration, or interpretation of evaluation materials.

This chapter addresses MCPS'[4] documentation relating to the evaluation and placement of handicapped children. The specific areas analyzed include:

Nondiscriminatory evaluation and testing materials

Preplacement evaluations

Evaluation procedures, including performing evaluations in native language or other mode of communication, validation, use of trained personnel, use of IQ tests, administration of tests, use of a single procedure, use of a multidisciplinary team, scope of the evaluation, and psychological evaluations

Placement procedures, including use of a variety of sources, documentation of materials used, and group decision making

Reevaluations

Additional procedures for evaluating children with specific learning disabilities, including additional team members, criteria for determining the existence of specific learning disabilities, observation, and written reports

II. Nondiscriminatory Evaluation and Testing Materials

The federal legal framework specifies that testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory.[5] The state legal framework incorporates these prohibitions and adds that tests may not discriminate on the basis of sex, language, or national origin.[6]

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[1] See Issues in the Classification of Children, a report by the Project on Classification of Exceptional Children (Jossey-Bass).

[2] The federal mandates are set out in Column 1 on pages 5-5 through 5-18.

[3] The state mandates are set out in Column 2 on pages 5-5 through 5-18.

[4] The MCPS' documents are set out in Column 3 on pages 5-5 through 5-18.

[5] 45C.F.R. 121a.530(b). See also HEW's regulations implementing Title VI of the Civil Rights Act of 1964 (45C.F.R. Part 80).

[6] State Bylaw 13.04.01.05 A.

The Maryland State Department of Education (MSDE) has also prepared a comprehensive guide for conducting evaluations which satisfy federal/state mandates.[7] This guide includes 14 suggestions on how to ensure that tests are nondiscriminatory.

MCPS' general policy on the Handicapped is set out in Board of Education Resolution 834-78.[8] The resolution states that assessment instruments will be appropriately adapted to the child's handicapping conditions, age, socioeconomic status, and cultural background. There are two problems with this resolution. First, it is not sufficiently comprehensive in that race and sex are not included and no reference is made to the state guidelines. More importantly, regulations to publish the policy statements and establish approved procedures were never developed. In addition ACES does not contain a reference to Board of Education Resolution 834-78.

MCPS procedures with respect to psychological testing (MCPS Regulation 335-3) are consistent with federal and state mandates.

III. Preplacement Evaluations

The federal[9] and state[10] legal frameworks provide that before any action is taken with respect to the initial placement of a handicapped child in a special education program a full and individual evaluation must be completed. The evaluation must satisfy criteria described below. (See Section IV.)

ACES and Board of Education Resolution 834-78 generally provide for preplacement evaluations. However, whereas Resolution 84-78 stresses the individual nature of the evaluation, ACES simply states that an evaluation must be performed.[11]

IV. Evaluation Procedures

The federal legal framework[12] includes minimum standards pertaining to the evaluation process. LEAs must, for example,

A. Administer tests in the child's native language or other mode of communication

B. Validate tests

C. Ensure that tests are administered by trained personnel

D. Refrain from using IQ tests as the sole assessment instrument

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[7] Guidelines for Protection in Evaluation.
[8] "Policy on Education of Handicapped Children" Board of Education Resolution 834-78 (December 5, 1978). See also MCPS Regulation 335-3 pertaining to psychological testing.
[9] 45C.F.R. 121a.531; 45C.F.R. 84.35(a).
[10] State Bylaw 13.04.01.05(c)(1) and (6).
[11] See ACES page 14.
[12] 45C.F.R. 121a.532; 45C.F.R. 84.35(b).

E. Administer tests so that they assess what they are designed to assess rather than a child's impaired sensory, manual, or other speaking skills

F. Use a multidisciplinary team to interpret the evaluations

G. Ensure that the evaluation is sufficiently comprehensive

H. Refrain from conducting psychological tests if the parent refuses to consent[13]

The state legal framework[14] generally incorporates the federal standards and contains comprehensive guidelines or suggestions on "how to" implement the policies.

MCPS' policy appears in Board of Education Resolution 834-78. The policy addresses, in cursory form, the following criteria set out in the federal and state legal frameworks: native language or other mode of communication criteria, use of IQ as sole assessment instrument, and use of a multidisciplinary team. ACES addresses the use of a multidisciplinary team. However, ACES makes no reference to the other criteria and does not reference the state guidelines. No MCPS documentation was located concerning the remaining criteria, i.e., validation, use of trained personnel to administer the tests, administration of tests, and scope of the assessment. With respect to psychological testing, MCPS Regulation 335-3 contains standards for validation and administration by trained personnel. MCPS' procedure of permitting the due process hearing examiner to overrule a parent's objectives to psychological testing may be inconsistent with federal law, depending on OE's interpertation. MCPS should seek written clarification of this policy.

In summary, MCPS' documents pertaining to evaluation are not sufficiently comprehensive; and where policy exists, it is not widely disseminated in documents that reach the appropriate school level personnel.

V. Placement Procedures

The federal[15] and state[16] legal frameworks include minimum standards concerning the placement of handicapped children. These standards include:

A. The use of a variety of sources

B. The documentation and careful consideration of materials used

C. Group decision making

D. Decisions consistent with least restrictive environment standards

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[13] Section 439 (b) of the General Education Provisions Act.

[14] State Bylaw 13.04.01.05C and 13.04.01.06C.

[15] 45C.F.R. 121.a.533 and 45C.F.R. 84.35(c).

[16] State Bylaw 13.04.01.05 and .06.

MCPS' procedures pertaining to placement set out in Board of Education Resolution 834-78 and in ACES are generally consistent with federal and state mandates. However, the presentation is not sufficiently comprehensive. For example, the federal standard concerning the use of a variety of sources states that the LEA must use a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. MCPS' policy or procedures do not mention any of these sources.

VI. Reevaluation

The federal[17] and state[18] legal frameworks generally provide that LEAs must ensure that an evaluation of a handicapped child is conducted every three years or more frequently if conditions warrant or if the parent or teacher requests a reevaluation.

The MCPS' policy, as set out in Board of Education Resolution 834-78, is consistent with the federal and state mandates. The policy does not, however, appear in ACES.

VII. Additional Procedures for Evaluating Children with Specific Learning Disabilities

On December 29, 1977, BEH published in the Federal Register amendments to the Part B of EHA regulations which added procedures for evaluating children with specific learning disabilities.[19] The procedures include:

A. Provision for additional team members

B. Criteria for determining the existence of specific learning disabilities

C. Observation

D. Written reports

No state policy incorporating these provisions was identified. Similarly, no documents issued by MCPS were identified.

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[17] 45C.F.R. 121a.534 and 45C.F.R. 84.35(d).

[18] 1978 State Plan.

[19] 42FR65082 (December 29, 1977). The following sections were added to Title 45 of C.F.R.: 121a.540-.544.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Evaluation and Placement

FEDERAL	STATE	LOCAL
1. Nondiscriminatory Evaluation and Testing Materials (45C.F.R. 121a.530(b)) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.	1. Nondiscriminatory Evaluation and Testing Matrials In addition to prohibiting the use of racially and culturally discriminatory tests, state policy prohibits discrimination on the basis of sex, language, and national origin (State Guidelines at page 16; see also 1978 Maryland Amended Annual Program and State Bylaw 13.04.01.05A). Below are further guides to consider in selecting nondiscriminatory tests: 1. Do not use a standard test battery for every child. Design each battery to the child considering the information needed and the uniqueness of each child. 2. Cross validate the data using a different method for collecting the information. Check the data by using a different method and see if the results agree. 3. Be aware of and respect the limits of the test or procedure being used. 4. Within the multidisciplinary evaluation team, avoid "group think" and "closed set" phenomena. Invite open analysis. 5. Set aside for the team to consider overtly the question of possible discrimination. 6. Make decisions toward the less restrictive environment. If a mistake is made, make it toward the less restrictive environment. 7. If there is a question or concern which cannot be answered within the team, seek advice from someone with more experience. 8. Keep abreast of the current research and literature on nondiscriminatory testing. 9. Become knowledgeable and proficient in using different tests and procedures so that the procedures can be tailored to the child, not the child to the procedures.	1. Nondiscriminatory Evaluation and Testing Materials Assessment instruments will be appropriately adapted to the child's handicapping conditions, age, and socioeconomic and cultural background. (Board of Education Resolution 834-78 "Policy on Education of Handicapped Children," December 5, 1978.) See also MCPS Regulation 335-3 pertaining to psychological testing.

FEDERAL	STATE	LOCAL
	10. Include in the report a description of any concerns or problems encountered during the evaluation process. 11. Make evaluation decisions based on the child's needs, not administrative or program convenience. 12. Avoid thinking only in terms of tests. Think in terms of assessing, measuring. 13. Examiners should be aware of the biasing effect which may be introduced in the assessment process. The most unbiased instrument can be made discriminatory by simple misuse. 14. Do not use a test or procedure unless the evaluator is professionally comfortable with it.	
2. Preplacement Evaluations Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Section 121a.532 (45C.F.R. 121a.531). A recipient that operates a public elementary or secondary education program shall conduct an evaluation of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement 45C.F.R. 84.35(a).	2. Preplacement Evaluations The LEA must provide an appropriate educational assessment for all children identified through established screening procedues as potentially in need of special education programs (13.04.01.05C(1)). All students, as part of their preplacement evaluation, shall receive a full and individual educational evaluation. It is during this phase of the evaluation that the child's educational needs are identified. Not all handicapped students are in need of special educational services. The evaluation team must identify special educational needs, if any, of the student Any assessment may be waived if a comparable assessment, in the opinion of the Admission, Review, and Dismissal Committee, has been completed during the six months before the time of the scheduled school assessment and made available to the school, provided the parents and local education agency have agreed to the waiver (13.04.01.05C(6)).	2. Preplacement Evaluations Appropriate educational and other assessments will be conducted to determine whether a child is in need of special education services and to develop an IEP for each child. Written and informed consent will be obtained before a child suspected of being handicapped will be evaluated (ACES).

FEDERAL	STATE	LOCAL
3. Evaluation Procedures (45C.F.R. 121a.532 and 45C.F.R. 84.35(b))	3. Evaluation Procedures	3. Evaluation Procedures (See generally MCPS Regulation 340-3 pertaining to student testing and 335-3 pertaining to psychological testing.)
a) Native Language or Other Mode of Communiction	a) Native Language or Other Mode of Communiction	a) Native Language or Other Mode of Communiction
Tests and other evaluation materials must be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so.	The appropriate educational assessment must be in the child's primary language (13.04.01.05C(1)). The following checklist for ensuring compliance is set out at page 25 of the State Guidelines: (1) Primary Language (a) What language is predominantly spoken in the pupil's home? (b) Does the pupil need a translator? (2) Speech (a) Is the pupil's speech intelligiable? (b) If not, how does he or she communicate/respond? (3) Hearing (a) Does the pupil have a hearing impairment sufficient to interfere with understanding the test directions? (b) If so, what means of communication can be used? (4) How mature is the pupil's understanding and use of language, i.e., syntactical functions and vocabulary meanings? (5) Vision (a) Does the pupil have a visual impairment severe enough to interfere with understanding of test directions and responding to test materials? (b) If so, what adjustments need to be made? (6) Hand Use (a) Does the pupil have sufficient control of his or her hands to manipulate test items that must be moved? (b) If not, what adjustments need to be made? (7) Head and Postural Control (a) Is the pupil able to maintain a reasonably upright sitting/body position and head position? (b) If not, what adjustments need to be made?	Assessment will be administered in the child's primary language. Interpreters will be provided in the child's primary language, or in sign language when necessary, throughout all phases of the evaluation process (Board of Education Resolution 8340-78 "Policy on Education of Handicapped Children).

FEDERAL	STATE	LOCAL
	(8) Sociocultural and Experience Background Has the pupil been in an environment where he or she may not have had experience with activities like those used in the test items?	
b) Validation	b) Validation	b) Validation
Tests and other evaluation materials must be validated for the specific purposes for which they are used.	(A lengthy discussion of validation appears at pages 27-31 of the State Guidelines.)	Psychological tests must be validated (MCPS Regulation 335-3).
c) Trained Personnel	c) Trained Personnel	c) Trained Personnel
Tests and other evaluation materials must be administered by trained personnel in conformance with the instructions provided by their producer.	The test user must be knowledgeable about the test or procedure. If the test is standardized and the user elects to violate standardization, this should be clearly reported along with an explanation. The test user should understand the effect this destandardization may have upon the child's performance. Using short forms of tests, as is often done with the WISC-R for example, changes not only standardization but the reliability and validity also. The decisions made based upon this violation of standardization should be guarded; and cross validation of data should be sought, using a different methodology. There are times also when standardization procedures will be violated unintentionally. These instances should also be reported and taken into consideration in decision making. Interruptions, poor lighting, development of poor rapport between tester and testee are just a few possible examples (State Guidelines on p. 32).	Only qualified persons can administer psychological tests (MCPS Regulation 335-3).
d) Use of IQ Tests	d) Use of IQ Tests (See Point h) below.)	d) Use of IQ Tests (See Point f) below.)
Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.		

FEDERAL	STATE	LOCAL
e) Administration of Tests Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).	e) Administration of Tests If a child has an impairment and there is a need to evaluate his/her cognitive functioning, care must be taken that the test of procedure chosen does not penalize the child for his/her impairment. If these considerations are not attended to, the resultant estimate may be more a reflection of his/her impairment rather than cognitive functioning. One example is asking a child with a speech impairment to respond orally to an assessment of reading achievement, i.e., WRAT reading subtest. Another example is the oral administration of a vocabulary test to a hearing impaired child. The same reasoning would apply to the child with other impairments, such as manual impairment. This is precisely why it is essential to know the status of the child in these areas as a prerequisite to any further testing.	e) Administration of Tests
f) Bar Against Use of Single Procedure No single procedure may be used as the sole criterion for determining an appropriate educational program for a child.	f) Bar Against Use of Single Procedure (See Point h) below.)	f) Bar Against Use of Single Procedure No single assessment result will be used to determine placement (Board of Education Resolution 834-78).
g) Multidisciplinary Team The evaluation must be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.	g) Multidisciplinary Team (13.04.01.06C) (1) Each local education agency shall maintain an Admission, Review, and Dismissal Committee or committees, which serves with the authority of the local superintendent of schools and is composed of the following: (a) A chairperson designated by the local superintendent (b) Individuals who are familiar with the child's current level of functioning (these individuals shall include a special educator and interdisciplinary personnel from the local education agency and the local health department) and other public agencies, as appropriate (c) Others as deemed appropriate, such as individuals expected to become deliverers of direct service to the student	g) Multidisciplinary Team Composition consistent with state law (see Elementary ACES at page 17).

(2) If a student is currently being served in a nonpublic school or state funded or operated institution, representatives from that program shall be invited to provide information relating to the student's educational needs. These representatives shall be informed ten calendar days before scheduled meetings.

(3) The responsibilities of the committee or committees shall be as follows:

(a) Referral

To receive referrals for special education services within 30 calendar days of the completion of the assessment

(b) Placement

i) To determine all special education level placements within the local school system

ii) To recommend all nonpublic tuition placements to the State Department of Education in accordance with Section F, below

iii) To designate individuals who will be responsible for developing the individualized education program within 30 calendar days of the committee placement decision

iv) To approve the individualized education program

v) To consider the logistics of transporting the student to the program when considering appropriate placements

(c) Review

i) To review pupil progress based upon the individualized education program in accordance with Section (d) below

ii) To recommend modifications in the individualized education program, as necessary

iii) To recommend dismissal from special education program, if appropriate

iv) To review pupil placement decisions in cases where information not previously available is presented to the ARD Committee

(4) Parents or guardians, and students as appropriate, shall be informed in writing in their primary mode of communication of their rights with respect to each of the following functions and responsibilities of the Admission, Review, and Dismissal Committee.

FEDERAL	STATE	LOCAL
	(5) The local education agency shall develop procedures for: (a) Informing the parents or guardians in writing when the child is referred to the Admission, Review, and Dismissal Committee at least ten calendar days before the meeting (b) Securing written permission before assessment is initiated (c) Informing parents or guardians of the assessment results and the possibility of a special education program placement (d) Obtaining written permission for placement and for reporting this placement to the State Department of Education (e) Informing parents of the review schedules and process (f) Reviewing by the Admission, Review, and Dismissal Committee of information not previously available to the committee	
h) Scope of Assessment	h) Scope of Assessment	h) Scope of Assessment
The child must be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments, e.g., psychological, physical, or adaptive behavior. However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.	(1) The local education agency shall provide an appropriate education assessment in the child's primary language for all children identified through established screening procedures as potentially in need of special education programs. This assessment shall consist of reading, math spelling, written and oral language, and perceptual motor functioning, as appropriate. (2) The following assessments shall be provided in addition to the required educational assessment as appropriate: (a) An assessment of cognitive factors shall include one or more of the following: psychological, speech or language, or both, as appropriate, and shall be administered by a professional certified in the specialty area by the State Department of Education. (b) An assessment of emotional factors shall include one or more of the following: a psychiatric evaluation by a licensed psychiatrist, an evaluation by a certified or licensed psychologist, or a State Department of Education certified school psychologist. (c) An assessment of physical factors shall include one or more of the following as appropriate: medical, ophthalomological, audiological, and neurological. They shall be administered by individuals licensed in the respective specialty areas.	Appropriate educational and other assessments will be conducted to determine whether a child is in need of special educational services and to develop his/her IEP (Board of Education Resolution 834-78).

(3) Each assessment report shall include, in addition to any matters required by federal regulation:

(a) A description of behaviors which establishes the existence of a handicapping condition

(b) A statement which describes, in terms of special education services needed, the child's performance as it deviated from developmental milestones and/or general education objectives, as appropriate

(c) A statement of criteria used to establish the deviation of the child's behaviors from those of nonhandicapped age mates which establishes the eligibility for special educational services and the criteria used to make determinations.

(d) The signature of the individual who has conducted the assessment

(4) The results of the assessment shall be written and shall include patterns of development, learning, and behavior, as well as academic achievement.

(5) The assessment information is used by the Admission, Review, and Dismissal (ARD) Committee in carrying out its responsibilities for the determination of program placement.

All individuals who have been referred from screening, as having possible special education service needs, shall receive a full and individual assessment of their educational needs.

In addition to this educational assessment, every individual being evaluated will also receive an assessment of one or more of the following: their cognitive functioning, their social/emotional functioning, or their physical functioning.

During initial screening the student will have received an evaluation of his/her vision, hearing, and motor functioning. In addition, the screening information should also include data on developmental history and inner, receptive, and expressive language skills. If this data is not available, the ARD Committee should make arrangements to obtain this data and make it available to the evaluation team.

Where the results of screening indicate the possibility of a handicapping condition, then a full assessment as described in the bylaw is required. These assessments must be completed within 45 days of the referral.

In all cases the child who is assessed must receive a full and individual educational evaluation. Areas of evaluation should include the child's progress in specific skill areas, achievement in subject areas, learning style, and academic strengths and weaknesses. Where a child's handicaps make standard educational assessments impossible or inappropriate, such as with SPH children, then other procedures are to be used, such as developmental measures.

In addition to the educational assessment, the child will recieve an evaluation of his/her cognitive, emotional, and/or physical functioning. At least one of these will be done and more than one if appropriate. It is important to note that the bylaw does not require a standard battery of tests. As a matter of fact, this is highly discouraged. In addition, the bylaw does not require that a psychological assessment be conducted in all cases. The psychological assessment should be given, as appropriate, to determine eligibility and/or program planning needs.

It is important to remember that evaluations of a child's cognitive, emotional, and physical functioning must be conducted by certified and/or licensed personnel as appropriate (State Guidelines at p. 34).

The purpose of the evaluation is twofold: to establish eligibility for special education services and to identify the special services needed by the child. The report should be sufficiently comprehensive to establish eligibility and to identify possible appropriate long- and short-range objectives, giving direction to the teacher(s) in meeting the educational needs of the child.

Maryland Bylaw 13.04.01 explicitly requires that the written evaluation report contain certain statements. The first of these is a statement describing the behaviors which establish the existence of a handicapping condition.

It is important to realize that labels, although necessary for reporting SSIS forms, are not directly helpful in educational planning. Much more important and more helpful in educational planning are descriptive statements of behaviors which establish the handicapping condition.

The second type of required statement asks for a delineation of the types of special educational services which are needed, as they relate to the child's performance and his/her deviation from developmental and/or general educational objectives.

The third statement asks that the criteria used in establishing the deviation be specified. These statements might simply be identification of the test or evaluation procedures used.

Although the format of the written report remains flexible, it is mandated that the report address the child's patterns of development, learning, and behavior, as well as academic achievement.

Patterns of development should be available from the screening data, or the child's developmental history can be obtained by the school nurse from the parent(s) and combined with data from the child's education history.

Patterns of learning refers to the individual's characteristic mode of functioning. Even though there are rules of learning which apply to all of us, each of us has our own characteristic ways or preferred modes of learning. It's the same for behavior. The evaluator is not restricted to any one theory or model. The information needed concerns the behavior and learning approaches used by the individual being evaluated.

It is the responsibility of the ARD Committee to insure that the evaluation data and reports are well documented and carefully considered. In addition to the usual scrutiny of the data, the ARD Committee should look critically for weak areas in the evaluation, examine the child Evaluation Planning Sheet, and complete the ARD Chairpersons' Checklist Guide.

FEDERAL	STATE	LOCAL
c) Group Decision Making In interpreting evaluation data and in making placement decisions, LEAs must insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.	c) Group Decision Making (See Point 2.g) above.)	c) Group Decision Making (See Point 2.g) above.)
d) Decisions Consistent With LRE Rules LEAs must ensure that placement decisions are made in conformity with the least restrictive environment rules.	d) Decisions Consistent With LRE Rules	d) Decisions Consistent With LRE Rules
e) Development of IEP If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child.	e) Development of IEP See Chapter 8.)	e) Development of IEP See Chapter 8.)
i) Psychological Testing No student shall be required, as part of any applicable program, e.g., Part B of EHA, to submit to psychiatric examination, testing, or treatment or psychological examination, testing, or treatment in which the primary purpose is to reveal information concerning mental and psychological problems potentially embarrassing to the student or his family (Section 439(b) of GEPA, as added by P.L. 95-561).	i) Psychological Testing	i) Psychological Testing Testing may take place only after informed consent has been obtained (MCPS Regulation 335-3). Note interviews with MCPS staff indicate that where parent refuses consent due process hearing officer can overrule and require that testing be completed.
4. Placement Procedures (45C.F.R. 121a.533 and 45C.F.R. 84.35(c))	4. Placement Procedures (See above under Point 2.g) for applicable sections of State Bylaw)	4. Placement Procedures
a) Variety of Sources In interpreting evaluation data and in making placement decisions, LEAs must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.	In the ARD meeting, where the placement decision is made, it is imperative that the ARD Committee include at least one person who has knowledge of the evaluation data, not just the report or scores. A member of the evaluation team would best perform this function. Optimally the individual who administered the evaluation should participate. In addition, a person knowledgeable about the child must be included. The parents could fill this role, but their participation on the ARD team is NOT	a) Variety of Sources No single assessment result will be used to determine placement (Board of Education Resolution 834-78 see also memorandum from the superintendent to school principals).
b) Documentation and Careful Consideration of Materials Used In interpreting evaluation data and in making placement decisions, LEAs must insure		b) Documentation and Careful Consideration of Materials Used Records from SARD Meetings are kept for each student discussed (one set of records for principal's file and a second set for student's file) ACES on p. 12.

FEDERAL	STATE	LOCAL
that information obtained from all sources is documented and carefully considered.	required by the bylaw. Parents would most certainly "be knowledgeable about the child." The child's classroom teachers can also be a valuable aid in the placement decision. They, more than anyone, have a consistent sample of the child's school behavior and should be included on the ARD Committee when making a placement decision.	
5. Reevaluation (45C.F.R. 121a.534 and 45C.F.R. 84.35(d))	5. Reevaluation	5. Reevaluation
a) Review of IEP LEAs must ensure that each handicapped child's IEP is reviewed (see chapter on IEPs).	a) Review of IEP (See chapter on IEP.)	a) Review of IEP (See chapter on IEP.)
b) Timeframes LEAs must ensure that an evaluation of the child is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.	b) Timeframes 1978 Maryland Amended Annual Program Plan repeats language of Part B of EHA Regulation.	b) Timeframes Evaluation and reevaluation will take place within the legally prescribed timeframe. Reevaluations will be conducted sooner than legally specified if necessary (Board of Education Resolution 834-78).
6. Additional Procedures for Evaluating Children with Specific Learning Disabilities	6. Additional Procedures for Evaluating Children with Specific Learning Disabilities	6. Additional Procedures for Evaluating Children with Specific Learning Disabilities
a) Additional Team Members (45C.F.R. 121a.540) Each LEA must include on the multidisciplinary team, in addition to the members mandated by the general rules, the following persons: The child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age; and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. It is the position of the Office of Education that when evaluating children suspected of having a specific learning	a) Additional Team Members	a) Additional Team Members

FEDERAL	STATE	LOCAL
disability, where an appropriate licensed, certified, or approved learning disability teacher or specialist is available, either in the local education agency, through an intermediate education agency, or other formal agreement structure, he/she should serve on the multidisciplinary evaluation team in meeting the requirement of Section 121a.523(e). Clearly these teachers or specialists would have "... knowledge in the area of suspected disability."		
b) Criteria for Determining the Existence of Specific Learning Disabilities (45C.F.R. 121a.541)	b) Criteria for Determining the Existence of Specific Learning Disabilities	b) Criteria for Determining the Existence of Specific Learning Disabilities
A team may determine that a child has a specific learning disability if: (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in Paragraph a)(2) of this section, when provided with learning experience appropriate for the child's age and ability levels. (2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: (i) Oral expression (ii) Listening comprehension (iii) Written expression (iv) Basic reading skill (v) Reading comprehension (vi) Mathematics calculation (vii) Mathematics reasoning The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of: (1) A visual, hearing, or motor handicap (2) Mental retardation (3) Emotional disturbance (4) Environmental, cultural, or economic disadvantage		

FEDERAL	STATE	LOCAL
c) Observation (45C.F.R. 121a.542) (1) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (2) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of the age.	c) Observation	c) Observation
d) Written Report (45C.F.R. 121a.543) The team shall prepare a written report of the results of the evaluation. The report must include a statement of: (1) Whether the child has a specific learning disability (2) The basis for making the determination (3) The relevant behavior noted during the observation of the child (4) The relationship of the behavior to the child's academic functioning (5) The educational relavant medical findings, if any (6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion.	d) Written Report	d) Written Report

CHAPTER 6

EXCESS COSTS, SUPPLANTING, COMPARABILITY, AND PROGRAM OPTIONS

I. Overview of Legal Mandates[1]

To receive assistance under Part B of EHA, LEAs must make three interrelated assurances concerning the equitable provision of services to handicapped children. First, LEAs must maintain adequate records demonstrating that handicapped children are receiving the same level of state and local "base" funds provided to nonhandicapped children (excess cost)[2] and that the level of commitment with respect to the provision of particular services is being maintained (supplanting).[3] Second, LEAs must assure that handicapped children receiving assistance under EHA are provided services that are comparable to services provided to similarly situated handicapped children not receiving assistance under EHA (comparability).[4] Finally, handicapped children must receive the same range of program options provided to nonhandicapped children (program options).[5]

State law reiterates the obligation to treat handicapped students in the same fashion it treats nonhandicapped students with respect to the provision of classrooms and facilities.[6]

II. Analysis of MCPS Policy[7]

MCPS' practice is to provide comparable services to all children.[8] Notwithstanding this general statement, absent an in-depth review of the MCPS system, it is impossible to determine whether the county's records are adequate[9] and whether they demonstrate compliance with Part B. of EHA and Section 504. A recent review by SEA indicates compliance.[10]

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[1] The federal mandates are set out in Column 1 on page 6-2. The state mandates are set out in Column 2 on page 6-2.

[2] 45C.F.R. 121a.229 and 121a.183.

[3] 45C.F.R. 121a.230.

[4] 45C.F.R. 121a.231.

[5] 45C.F.R. 121a.305. See also 45C.F.R. 84.33 (a) and 84.37 and 84.34 (c).

[6] State Bylaw 13.04.01.04G.

[7] Local documents are set out in Column 3 on page 6-2.

[8] 1979 LEA Application.

[9] Records are kept in accordance with the procedure set out in MCPS Regulation 210-1 (August 8, 1973).

[10] State Review Findings on pages 8-10.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Excess Costs, Supplanting, Comparability, and Program Option Provisions

FEDERAL	STATE	LOCAL
LEAs must assure the SEA that Part B of EHA funds will pay for the excess costs of programs for handicapped students (45C.F.R. 121a.229). Each LEA must maintain adequate records to show that it has met the excess costs requirement (45C.F.R. 121.a.183(b)). LEAs must also assure the SEA that Part B of EHA funds will be used to supplement, not supplant, state and local funds expanded for the education of handicapped students (45C.F.R. 121a.230). Furthermore, LEAs may not use Part B of EHA funds unless the LEA uses state and local funds to provide services to handicapped children receiving Part B of EHA assistance which, taken as a whole, are at least comparable to services provided to other handicapped children in that LEA. LEAs must maintain adequate records demonstrating compliance with this provision (45C.F.R. 121a.231). Finally, LEAs must take steps to ensure that handicapped children have available to them the variety of educational programs and services available to nonhandicapped students, including art, music, industrial arts, consumer or homemaking education, and vocational education (45C.F.R. 121a.305. See also 45C.F.R. 84.33(a), 84.37, and 84.34(c)).	LEAs must provide classrooms and facilities for programs for handicapped children which are at least equivalent to nonhandicapped students (13.04.01.04G).	MCPS follows the guidelines of the *Maryland Financial Reporting Manual*. Montgomery County is committed to the provision of comparable services to all children. (1979 LEA Application for Assistance under Part B of EHA). See also MCPS Regulation 210-1 (August 8, 1973).

CHAPTER 7

FULL EDUCATIONAL OPPORTUNITY

I. Introduction

This chapter of the paper analyzes the mandates in federal and state laws pertaining to the provision of full educational opportunity for handicapped children. In general, MCPS' documentation appears to be consistent with and, to a degree, may even exceed mandates under Part B of EHA and state law. However, the local documents reviewed do not indicate whether parent participation occurred. Finally, although federal law contains precise guidelines regarding the phasing in of services for particular categories of handicapped children and particular age groups, the MCPS documents reviewed do not reflect these provisions.

II. Timelines for the Provision of a Free Appropriate Public Education

A. Overview of the Legal Mandates[1]

Section 504 states that as of June 3, 1977, all qualified handicapped children are entitled to an education that is as appropriate as that provided to nonhandicapped children.[2] To the extent it is not practicable to meet this timeline, recipients were given to September 1, 1978, to come into full compliance.[3] A "qualified handicapped person" means, among other things, a handicapped person of an age during which nonhandicapped persons are provided such services.[4]

In summary, after June 3, 1977, school districts providing an educational opportunity to nonhandicapped children are required to provide an equal opportunity to handicapped children. Any "phasing-in" was to have occurred between June 3, 1977, and September 1, 1978.[5]

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[1] The federal and state mandates appear on pages 7-3 through 7-4, Columns 1 and 2.

[2] 45C.F.R. 84.33(a).

[3] 45C.F.R. 84.33(d).

[4] 45C.F.R. 84.3(k)(2).

[5] Part B of EHA provides that all handicapped children ages 6-17 are entitled to a FAPE not later than September 1, 1978. Children ages 3-5 and 18 must receive a FAPE no later than September 1, 1978; and children ages 19-21 must receive a FAPE no later than September 1, 1980, unless law expressly prohibits or does not authorize the expenditure of public funds to provide an education for nonhandicapped children who are a comparable age. (45C.F.R. 121a.300(b)(5)). The provisions in Part B of EHA pertaining to timelines where nonhandicapped children of a particular age group are presently receiving services are ambiguous. In discussions with BEH and the HEW Office of General Counsel, conflicting interpretations were offered. One interpretation is that when an LEA provides services to nonhandicapped persons of a particular age group, it must provide similar services to handicapped persons in that age group NOW. A second interpretation is that services which are presently provided to nonhandicapped children ages 18-21 must be provided to handicapped children of that age group by September 1, 1980 (see 45C.F.R. 121a.300(a) and 121a.300(b)(2)).

Under Maryland law, all children ages 5-20 must be provided an opportunity to receive a free public elementary and secondary education.[6]

The state bylaw, consistent with the MARC decision, calls for the immediate provision of a FAPE for all children ages 5-20 and the phasing in of programs for children from birth-4 by September 1, 1980.[7]

Part B of EHA sets out, among other things, rules for the phasing in of programs for children ages 3-5 and 18-21. For example, the regulations provide that if an LEA provides education to 50 percent or more of its handicapped students in any disability category in these age groups, it must make a FAPE available to all of its handicapped children of the same age who have that disability.[8]

B. Analysis of MCPS' Documentation

MCPS' documentation is consistent with federal and state mandates.[9]

MCPS' policy and procedures may be exceeding state timelines, depending on the degree to which they are presently meeting all the needs of all the handicapped children ages 0-4.

With respect to compliance with mandates in the Part B of EHA regulations concerning the phasing in of programs, e.g., the 50 percent rule (see above), MCPS' written materials are not sufficiently comprehensive because they do not address all the issues.

III. Full Educational Opportunity Goals and Timetables

LEAs must include in their applications (a) a goal of providing a full educational opportunity to all handicapped children ages 0-21, (b) a detailed timetable for achieving the goal, (c) a description of the services necessary to meet the goal, and (d) provision for participation of and consultation with parents of handicapped children.[10] State policy provides that full implementation of the full educational opportunity goal will be accomplished by September 1, 1980.[11] MCPS documents as described above are consistent with federal and state mandates and, to a degree, may even be ahead of the state timelines with respect to certain children ages 0-4.[12]

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[6] Article VIII, Title 7, Subtitle 1, and Title 8, Subtitle 4, the Public School Laws of Maryland.

[7] State Bylaw 13.04.01.01 and .04B.

[8] 45C.F.R. 121a.300(b)(3).

[9] MCPS' documentation appears in Column 3 on pages 7-3 through 7-4.

[10] 45C.F.R. 121a.222, .223.

[11] 1979 Maryland Amended Annual Program Plan.

[12] See Supra., page 7-1.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Full Educational Opportunity

FEDERAL	STATE	LOCAL
1. Timelines for the Provision of a Free Appropriate Public Education	1. Timelines for the Provision of a Free Appropriate Public Education	1. Timelines for the Provision of a Free Appropriate Public Education
a) Part B of EHA (45C.F.R. 121a.300) A free appropriate public education must be made available to all children age 6-17 within a state not later than September 1, 1978. With respect to children age 3-5 and 18, states must ensure the provision of a FAPE no later than September 1, 1978, and that children age 19-21 receive a FAPE no later than September 1, 1980, in accordance with the rules described below. First, a state is not required to make a FAPE available to children 3-5, 18-21, if state law expressly prohibits or does not authorize the expenditure of public funds to provide education to nonhandicapped children in these age groups or the requirements are inconsistent with a court order. Second, if state law or a court order requires the state to provide education for handicapped children in any disability category in any of these age groups, the state must make a free appropriate public education available to all handicapped children of the same age who have that disability. Third, if a public agency provides education to nonhandicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age. Fourth, if a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability. Fifth, if a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.	a) State Bylaw (13.04.01.01 and .04B) All children from birth through 20 residing in a LEA's jurisdiction who are handicapped and who are in need of special education and related services must be provided a FAPE. Appropriate services are to begin as soon as the child can benefit from them, provided services for children under the age of 5 must be phased in as required by law.	"Programs are developed to meet student needs as they are identified according to legally mandated timelines." Board of Education Resolution 834-78, "Policy on Education of Handicapped Children" (December 5, 1978). "Presently some programs exist for the 3 and 4 and 0-2 age groups. Programs are now being developed across all handicapping conditions." (1979 LEA application for Part B funds under EHA, page 3)

FEDERAL	STATE	LOCAL
b) Section 504 Each qualified handicapped person within a recipient's jurisdiction was entitled to a FAPE as of June 3, 1977, the effective date of the 504 regulation (45C.F.R. 84.33(b)). Recipients not in full compliance by June 3, 1977, must come into full compliance no later than September 1, 1978 (Section 84.33(d)). A "qualified handicapped person" means: with respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) Of an age during which nonhandicapped persons are provided such services, (ii) Of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) To whom a state is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act (45C.F.R. 84.3 (k)).	b) State Code (Article VIII, Title 7, Subtitle 1 and Title 8, Subtitle 4) All children age 5-20 are entitled to an elementary and secondary education provided at public expense. All children through age 20 in need of special education must be be educated at public expense.	
c) Policy Interpretation Part B of EHA only requires that the handicapped child be provided a FAPE through the secondary level to graduation. Part B does not require the provision of a post-secondary education (Letter to Danheim from Tyrrell, August 30, 1978).	c) Maryland State Board of Education (Resolution No. 1977-50) Appropriate programs must be provided no later than FY 1981 in the following order: (1) 5-20 not now receiving a reasonably appropriate education, (2) preschoolers ages 3 and 4, and (3) preschoolers age 0-2.	
2. Full Educational Opportunity Goal: Timetable (45C.F.R. 121a.222,223) LEA applications must include 1) a goal of providing full educational opportunity to all handicapped children, aged birth-21; 2) a detailed timetable for accomplishing the goal; 3) a description of the kind and number of facilities, personnel, and services necessary to meet the goal; and 4) provision for participation of and consultation with parents of handicapped children.	2. Full Educational Opportunity Goal: Timetable State Plan (1979 Plan) Full implementation of the full educational opportunities goal will be accomplished by September 1, 1980 (FY 1981).	2. Full Educational Opportunity Goal: Timetable (See 1. above.)

CHAPTER 8

INDIVIDUALIZED EDUCATION PROGRAMS

I. Introduction

The most important mandate in the federal[1] and state[2] legal frameworks are the provisions requiring the development of an individualized education program (IEP) for each handicapped person. In general, an IEP is a written comprehensive outline which describes the special education needs of each handicapped child and the services necessary to meet those needs. The following components of an IEP are identified in the federal and state legal frameworks:

Definitions
When IEPs Must Be in Effect
IEP Meetings
Participants in Meetings
Parent Participation
Content of IEP
Private School Placements
Children Enrolled in Parochial or Other Private Schools
School Personnel Accountability
Twelve-Month Programming

Set out below is an analysis of MCPS' documentation[3] applicable to each of these components.

II. Definitions

The federal legal framework explains that the IEP is a written statement for a handicapped child that is developed and implemented in accordance with the federal requirement described in this chapter. The state bylaw[4] explains that the IEP is a written comprehensive outline which describes the special educational needs of the child and the services to be provided to meet those needs. MCPS' definition is generally consistent with federal and state mandates.[5]

III. When IEPs Must Be In Effect

Federal policy provides that IEPs must be (a) in effect before special education and related services are provided and (b) implemented as soon as possible following the IEP meeting (see below).[6] A clarification by BEH explains that under normal circumstances the IEP must be implemented immediately following the IEP meeting.[7]

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1. The federal mandates are set out in Column 1 on pages 8-5 through 8-14.
2. The state mandates are set out in Column 2 on pages 8-5 through 8-14.
3. MCPS' documents are set out in Column 3 on pages 8-5 through 8-14.
4. State Bylaw 13.04.01.06D(1); See also 45C.F.R. 121a.340 which states that under Part B of EHA an IEP is a written statement that satisfies applicable standards in the regulations.
5. ACES on page 18.
6. 45C.F.R. 121a.342.
7. Comment to 121a.342 appears at 42FR42490 (August 23, 1977).

State policy generally provides that an IEP must be developed for each handicapped child at the beginning of the school year[8] and that it must be implemented no more than 30 days after its development.[9]

MCPS' documentation, consistent with federal policy, provides that the IEP must be in effect before services can begin.[10] The MCPS' procedures exceeds federal but not state policy by requiring a parent's sign-off of the IEP (see below).

MCPS' documentation is not sufficiently comprehensive in that it does not make reference to the state mandate that IEPs be completed by the beginning of the school year (where feasible) and the federal policy requiring that under normal circumstances IEPs be implemented immediately following the IEP meeting. The 30-day MCPS procedure for IEP implementation, which is consistent with state policy, is inconsistent with the federal standard requiring immediate implementation.

IV. IEP Meetings

Federal policy generally provides that LEAs must conduct meetings for the purpose of developing, reviewing, and revising IEPs. Periodic reviews of the IEP (at least once a year) must also be conducted.[11] State law provides for the establishment of Admission, Review, and Dismissal Committees (ARD) to perform, among other things, the functions described in the federal legal framework.[12] State law also requires that a review of each child's progress must be completed within 60 school days after the inital placement. Additional review must occur annually. The scope of the annual review is specified in the state bylaw.[13]

MCPS' documentation is generally consistent with federal and state mandates.[14] However, it is not sufficiently comprehensive in at least one respect. Whereas the state bylaw specifies the minimum scope of the annual review, comparable criteria are not spelled out in the MCPS documentation.

V. Participants In Meetings

The federal legal framework[15] specifies that an IEP meeting must include the following:

A. A representative of the public agency (other than the child's teacher) who is qualified to provide or supervise the provision of special education

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[8] 1978 Maryland Amended Annual Program Plan.
[9] State Bylaw 13.04.01.06D(3).
[10] ACES on page 19.
[11] 45C.F.R. 121a.343.
[12] 1978 Maryland Amended Annual Program Plan and State Bylaw 13.04.01.06D(5).
[13] State Bylaw 13.04.01.06 D (5).
[14] ACES on page 18.
[15] 45C.F.R. 121a.344.

B. The child's teacher

C. One or both of the child's parents

D. The child, where appropriate

E. Other individuals at the discretion of the parent or agency

The state legal framework, through the ARD committee, implements the federal mandate.[16] The MCPS' documentation is consistent with federal and state law.[17]

VI. Parent Participation

The federal legal framework provides that parents of handicapped students must be present at each meeting or afforded the opportunity to participate. Further, if neither parent can attend, Part B of EHA specifies elaborate procedures which must be followed to document that the LEA has made sufficient attempts to secure parent participation.[18] State policy incorporates the federal mandates and specifies that parents must "sign off" on their child's IEP.[19]

MCPS' procedures respecting the parent's role is consistent with the federal and state mandates.[20] However, MCPS' procedures respecting the documentation of attempts to secure parent participation are not set out in ACES and are therefore not sufficiently comprehensive. MCPS' procedure requiring a parent "sign-off" of the IEP exceeds federal mandates.

VII. Content of IEP

The federal legal framework specifies a minimum of five categories of information which must be contained in the IEP.[21] The 1978 Maryland Amended Annual Program Plan specifies nine categories of information;[22] the State Bylaw specifies six (which are generally consistent with the federal mandates).[23]

MCPS documentation generally repeats the categories set out in the state bylaw and federal legal framework but does not incorporate the policy set out in the 1978 Maryland Amended Annual Program Plan.[24] Thus, in this regard, MCPS' documentation is not sufficiently comprehensive.

In another respect, MCPS exceeds federal and state mandates. The IEP generally specifies the special educational and related services which are needed to meet the unique needs of each handicapped child. The IEP must include all services necessary to achieve this goal, not simply services presently available in the district. The detailed educational plan described in ACES, which identifies daily teaching

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16. 1978 Maryland Amended Annual Program Plan; State Bylaw 13.04.01.06D(2).
17. ACES on page 19.
18. 45C.F.R. 121a.345.
19. 978 Maryland Amended Annual Program Plan; State Bylaw 13.04.01.06D(3).
20. ACES on page 19.
21. 45C.F.R. 121a.346.
22. 1978 Maryland Amended Annual Program Plan.
23. State Bylaw 13.04.01.06D(4).
24. ACES on pages 18 and 19-20.

activities based on short-term objectives specified in the IEP, is not mandated by federal or state law unless, of course, detailed individual educational plans are developed for each nonhandicapped child. The MCPS documentation is designed to maximize the likelihood that the objectives, outlined in the IEP, are achieved and the services described therein are actually provided.

VIII. Private School Placements by LEA

The federal[25] and state[26] legal frameworks contain detailed standards governing the role of the LEA in ensuring that children placed in private schools have adequate IEPs. For example, Part B of EHA states that before an LEA places a handicapped child in or refers a child to a private school or facility, the LEA must initiate and conduct a meeting to develop an IEP.[27]

MCPS' documentation states that MCPS personnel will monitor the program delivered to the child to assure that participating schools meet MCPS program requirements.[28] This broad statement does not include or reference the specific standards set out in the federal and state legal frameworks and is therefore not sufficiently comprehensive.

IX. Children Enrolled in Parochial or Other Private Schools

Although detailed federal[29] and state[30] policies exist with respect to handicapped children enrolled in parochial or other private schools and the IEP requirements, no MCPS' documents addressing this issue were identified.

X. School Personnel Accountability

The federal[31] and state[32] legal frameworks specify that no school employee or official may be held accountable under Part B of EHA or the state bylaw because a child fails to satisfy goals and objectives in the IEP. No MCPS documents addressing this issue were identified.

XI. Twelve-Month Programming

A recent U. S. District Court in Pennsylvania held that, under Part B of EHA, LEAs must provide 12-month programs for handicapped children requiring such a program.[33] OCR has stated that school districts must provide services beyond the 180 day school year for certain children (e.g., severely mentally impaired children) of the extended programming is essential to meet the individual needs of a particular child and the need has been established by appropriate evaluation methods.[34] State policy has been that 12-month programming is not required.[35] BEH is still developing its policy.[36]

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[25] 45C.F.R. 121a.347.

[26] 1978 Maryland Amended Annual Program Plan, 1979 Maryland Amended Annual Program Plan, and Amendments to 1979 Maryland Amended Annual Program Plan.

[27] 45C.F.R. 121a.347(a).

[28] Board of Education Resolution 834-78, "Policy on Education of Handicapped Children" (December 5, 1978).

[29] 45C.F.R. 121a.348.

[30] 1979 Maryland Amended Annual Program Plan.

[31] 45C.F.R. 121a.349.

[32] State Bylaw 13.04.02.06D(4)(f).

[33] Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa., 1979).

[34] See OCR Digest of Significant Case-Related Memoranda, Volume 1, Number 1 at p. 28, (April and May 1979).

[35] Letter from Hornbeck to Bernardo (November 3, 1978)

[36] Letter from Vlasek to Torres (August 8, 1978).

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Individualized Educational Program

FEDERAL	STATE	LOCAL
1. Definitions (45C.F.R. 121a.340) The term "individualized educational program" means a written statement for a handicapped child that is developed and implemented in accordance with Sections 121a.341-.349 of the Part B of EHA regulations.	1. Definitions (State Bylaw 13.04.01.06D(1)) The individualized education program is a written comprehensive outline for total special education services which describes the special education needs of the child and the services to be provided to meet those needs. The goals, objectives, activities, and materials shall be adapted to the needs, interests, and abilities of each student.	1. Definitions (ACES on page 18) The IEP is a written comprehensive outline for total special education services based on assessment information and input from parents/students.
2. When IEPs Must Be in Effect(45C.F.R.121a.342; See also 45C.F.R. 84.33) a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency. b) An individualized education program must: (1) Be in effect before special education and related services are provided to a child and (2) Be implemented as soon as possible following the meetings under Section 121a.343 Comment. Under Paragraph b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under Section 121a.343. An exception to this would be 1) when the meetings occur during the summer or a vacation period or 2) where there are circumstances which require a short delay e.g., working out transportation arrangements. However, there can be no undue delay in providing special education and related services to the child.	2. When IEPs Must Be in Effect (See the 1978 and 1979 State Plans.) 1. Each local educational agency shall develop or revise, which ever is appropriate, an individualized education program for every handicapped child at the beginning of the school year and review and, if appropriate, revise its provisions periodically, but not less than annually. 2. Each local education agency is responsible for initiating and conducting meetings for developing, reviewing, and revising a child's individualized education program. 3. For a handicapped child who is receiving special educaton, a meeting must be held early enough so that the individualized education program is developed (or revised, as appropriate) by the beginning of the next school year. 4. For each handicapped child who is not receiving special education, a meeting must be held within 30 days of a determination that the child is handicapped or that the child will receive special education (20 U.S.C. 1414(a)(5)). State Bylaw 13.04.01.06D(3) states: The individualized educaton program shall be developed before special education program placement is implemented; and it shall be approved by the ARD Committee, signed by the parents, and implemented no more than 30 school calendar days after its development.	2. When IEPs Must Be in Effect (ACES on page 19) Before service can begin, the parent must approve of Parts A and B and must sign the general part of the IEP. A completed IEP form is shown in Appendix A, following Forms 13a and 13b. It is meant to serve as an example. Parent signature approves submission of the SSIS form to the Maryland State Department of Education. Parents receive a sample copy of the SSIS form (Appendix A, Sample 14), a copy of the IEP, and information on due process and the rights of parents, students, and staff.

FEDERAL

3. IEP Meetings (45C.F.R. 121a.343)

a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

b) Review. Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

Comment: The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

STATE

3. IEP Meetings (See 1978 and 1979 Maryland Amended Annual Program Plan.)

All providers of educational programs and services shall insure that an educational management plan is written regarding the educatonal level program objectives and learning strategies for each child identified for special education programs and/or services through the Admission, Review, and Dismissal Committee. In accordance with Bylaw 13.04.01, it shall have a direct and observable relationship to assessment and to state and local curriculum goals. The objectives, activities, materials, and curriculum goals shall be adapted to the needs, interests, and abilities of each student.

State Bylaw 13.04.01.06D(5), (6), and (7) state:

Each local education agency's Admission, Review, and Dismissal Committee shall provide for a review of the progress of each child who is receiving special education services. This review of each child's progress shall be completed within 60 school days after the initial placement.

If the review by the Admission, Review, and Dismissal Committee suggests that the initial placement was inappropriate or that different services would now benefit the child, or both, reassignment or alteration in service shall be made as appropriate. The written consent of parents or guardians shall be secured in accordance with Section C(5)(d).

Additonal review of the child's program shall occur at least annually thereafter and shall be conducted to determine the following:

(a) Whether the child has achieved the goals set forth in his individualized education program

(b) Whether the child has met the criteria which indicate readiness to enter into a less intensive special education program level

(c) Whether the program the child is in should be specifically modified to render it more suitable to the child's needs

(d) A written summary of this review shall be made available to the parents of the child within ten school days after the review is completed.

LOCAL

3. IEP Meetings (ACES on page 18)

The administrator as coordinator is responsible for inviting all necessary persons as defined by the unique needs of the child. Common sense and judicious use of staff time preclude involving superfluous personnel.

In preparation for the meeting, specialists who have worked with the child develop draft recommendations, goals, and objectives based on their perception of the child's needs.

During the meeting, participants present pertinent data and assessment information, the levels at which the child is functioning, and their suggested annual goals and short-term objectives for the child. The multidisciplinary team then selects priority objectives from among the suggestions made and recommends specific services. For services not available at the school, a referral to the area must be completed (Appendix A, Forms 10 and 11).

For in-school service, the team determines the date when services are to begin and how they will be evaluated. Participants present recommendations for programming to parents in language they can understand, avoiding educational jargon. For parents who are not fluent in English, an interpreter must be provided.

A 60-day IEP review is mandated by the proposed Maryland State Bylaw. It may coincide with the development of the detailed educational plan if additional time is need to pinpoint the specific information for the detailed plan. Often vacations and school absence by child or teacher necessitate additional time.

Review of IEP. The formal IEP review must take place at least annually after the initial 60-day review but may be sooner if the child is not progressing or if the IEP specified an earlier date. It requires a meeting of the team using SARD procedures and must be documented on the lower section of the detailed plan (Appendix A, Sample Form 15).

Parents participate in IEP reviews in the same manner as in the initial IEP development. Recommendations are presented to the parent in draft form so that parental revisions and modificaions can be considered for inclusion. Parents are given a copy of the review document. If the student is not making progress and the resources of the school have been exhausted, the student will be referred to the area for more intensive services. Case management is then transferred to the area. Such referrals are always made by personal contact with the area continuum education staff assigned to the school, as outlined under B-4 on page 14. Representatives from the school team will be invited to participate in the area team decision making.

When area teams recommend that students from MCPS special classes (Level 5), alternative centers (Level 6), or nonpublic placemet (Level 7) be placed in a local school, it is expected that representatives from the area, the receiving school team, and the parents meet to discuss how the receiving school will be able to meet the student's need. (Comment - Levels have changed as a result of changes to Maryland special education bylaw. There are now six levels of service.)

4. Participants In Meetings (45C.F.R. 121a.344)

a) General. The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special children

(2) The child's teacher

(3) One or both of the child's parents, subject to Section 121a.345

(4) The child, where appropriate

(5) Other individuals at the discretion of the parent or agency

b) Evaluation personnel. For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

The determination of who is knowledgeable about the evaluation procedures is

4. Participants In Meetings (See 1978 and 1979 Maryland Amended Annual Program Plans which adopt the provisions of the Part B of EHA regulations)

The state educational agency shall insure that each local education agency shall have a plan to formulate, implement, and maintain an Admission, Review, and Dismissal Committee. This committee shall consist of interdisciplinary personnel who are directly responsible for the special education needs of the child. Each local agency will set a schedule for every committee meeting or will develop procedures that will establish a set time, date, and plan for the convenience of these committees. The public agency shall insure that each meeting includes the following participants:

1. A representative of the public agency, other than the child's teachers, who is qualified to provide or supervise the provision of special education
2. The child's teacher
3. One or both of the child's parents
4. The child, where appropriate
5. Other individuals at the discretion of the parent or agency

The state education agency shall insure that all public providers who have evaluated a child for the first time and

4. Participants In Meetings (ACES on page 19)

The SARD team, as specified by law, is composed of:

An administrator
The student's teacher(s)
A specialist trained in individual diagnostic evaluations who is knowledgeable in the student's suspected area of disability
A representative from the Health Department, where possible
The student, when appropriate
The parent or parent surrogate

Parents may request that other professionals, a parent advocate, or a friend be present. If the parent is not fluent in English, an interpreter must be provided by MCPS. The intent is to bring together persons who are most knowledgeable about the child and who will improve the process but not to involve superfluous people. A small group allows for more flexibility in scheduling.

FEDERAL	STATE	LOCAL
made in accordance with SEA certification, licensing, or appropriate standards. (Letter from Tyrrell to Rupley (February 17, 1978)). **Comments:** 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities: (a) For a handicapped child who is receiving special educaton, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist. (b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher or a teacher qualified to provide education in the type of program in which the child may be placed, or both. (c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting. 2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability. 3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under Paragraph b) (1) of this section would normally be the speech-language pathologist.	determined the child to need special education have a member of the evaluation team participate in the meeting or have some person present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation as in Bylaw 13.04.01 and P.L. 94-142, Section 121a.223. State Bylaw 13.04.01.06D(2) states: The individualized education program shall be developed in a meeting by a representative or represnetatives of the local education agency as designated by the Admission, Review, and Dismissal Committee; the parents or guardians; the child's teacher or teachers; the student, when appropriate; and when feasible, all other persons directly responsible for the implementation of the individualized education program.	
5. Parent Particpation (45C.F.R. 121a.345) a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend (2) Scheduling the meeting at a mutually agreed on time and place	5. Parent Particpation See the 1978 and 1979 Maryland Amended Annual Program Plans which adopt the provisions of the Part B of EHA regulations. State Bylaw 13.04.01.06D(2) specifies that parents must be involved. State Bylaw 13.04.01.06D(3) states that the IEP must be signed by the parents.	5. Parent Particpation (ACES on page 19) Parents (and the student) have full status in the meeting and should be treated as valuable partners in the decision-making process. Parents have the responsibility to deal openly and honestly with the school system and to request reasonable and realistic services. If the student is present, it is important to remember that the student has no more rights than the parent. The goal of the meeting is for parents and professionals to agree upon the

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b) The notice under Paragraph a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance. c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls. d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as: (1) Detailed records of telephone calls made or attempted and the results of those calls (2) Copies of cooerespondence sent to the parents and any responses received (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. f) The public agency shall give the parent, on request, a copy of the individualized education program. Where state law provides for representation of a child in an IEP meeting by foster parents, EHA does not require school administrators to also contact natural parents (Letter from Irvin to Robbin February 28, 1978)).		IEP for the student. If there are serious disagreements between the parents, the student, and/or the school, due process provides an impartial review and appeal procedures which are detailed on page 23. If the parent is not present at the SARD meeting, the team will assign responsibility for contacting the parent to one of the team members. That person will then call the parent to set up a meeting to explain the team's recommendation, receive parental input, incorporate it in the IEP, obtain the parent's signature on the IEP, and give the parent copies of the documents. If the parent is unable to attend the conference, the same procedure to obtain parental permission must be followed by mail (Appendix B, Sample Parent Letter 9).
6. Content of IEP (45C.F.R. 121a.346) The individualized education program for each child must include: a) A statement of the child's present levels of educational performance b) A statement of annual goals, including short-term instructional objectives c) A statement of the specific special education and related servies to be provided to the child, and the extent to which the child will be able to participate in regular	6. Content of IEP (See 1978 and 1979 Maryland Amended Annual Program Plans, which adopt the provisions of the Part B of EHA regulations.) The individualized education program for for each child must include: 1. A statement of the child's present levels of educational performance, including academic achievement, social adaptation, prevocational and vocational skills, psychomotor skills, and self-help skills 2. A statement of annual goals which describes the educational performance to be achieved by the end of the school year	6. Content of IEP (ACES on pages 18 and 19-20) It contains the following: The present levels of functioning of the child Annual goals, including short-term objectives Specific services the child will receive, including related services which may be on any level of the continuum of services The extent to which the child will participate in regular education programs

FEDERAL

educational programs

d) The projected dates for initiation of services and the anticipated duration of the services

e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, that objectives are being achieved

Policy Clarifications

The Part B of EHA regulations should *not* be construed to mean that an LEA must provide to handicapped children only those services which are available in the agency--all necessary services must be included in the IEP (DAS Bulletin No. 5, November 17, 1977. *See also* letter from Martin to Clark (March 29, 1978)).

Since a child with a mild speech impairment generally requires less intensive services than the more severely disabled child, the IEP procedure is *automatically streamlined* (Letter from Boyer to Porter (November 10, 1978)).

Section 121a.346(c) requires that the IEP contain both the extent of participation in regular education programs and the nature and extent of special education and related services. Thus, a child not requiring specially designed physical education will need detailed descriptions of programs and goals (Irvin to Browne (January 3, 1979)).

STATE

under the child's individualized education program

3. A statement of short-term, instructional objectives, which must be measurable intermediate steps between the present level of educational performance and the annual goals

4. A statement of specific educational services needed by the child (determined without regard to the availability of those sevices) including a description of:

   a. All special education and related services which are needed to meet the unique needs of the child, including the type of physical education program in which the child will participate

   b. Any special instructional media and materials which are needed

5. The date when those services will begin and length of time the services will be given

6. A description of the extent to which the child will participate in regular education programs

7. A justification for the type of educational placement which the child will have

8. A list of the individuals who are responsible for implementation of the individualized education program

9. Objective criteria, evaluation procedures, and schedules for determining on at least an annual basis, whether the short-term instructional objectives are being achieved

State Bylaw 13.04.01.06D(4) states:

> The individualized education program for each child shall include:
>
> (a) A statement of the child's special education needs and present levels of educational performance
>
> (b) A statement of annual goals, including short-term instructional objectives
>
> (c) A statement of the specific education and related services to be provided to the child and the extent to which the child will be able to participate in general educational programs

LOCAL

Projected date for beginning of services and anticipated duration of such services

Criteria for evaluating whether objectives have been achieved

A schedule for reviewing the IEP

Addition of Detailed Educational Plan

After the service is started, the teacher or specialist who is working with the child identifies daily teaching activities based on short-term objectives in the IEP and indicates the information on the Detailed Plan Form (Appendix A, Sample 15). The number of activities that are needed will vary from child to child. Within each activity, the methods, strategies, and materials will be specified. It is anticipated that the person working with the child will be able to develop the detailed plan with 30 days, if the service is on a frequent basis.

The draft of the detailed plan is discussed with parents.

It is suggested that refinements and revisions in daily activities, if necessary, be reported to parents at regular intervals, such as report card dates.

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	(d) The projected dates for initiation of services and the anticipated duration of the services (e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved. The IEP does not constitute a daily teaching plan for a teacher (Letter from Hornbeck to Bernardo, December 12, 1978).	
7. Private School Placements by LEA (45C.F.R. 121a.347) a) Developing individualized education programs (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with Section 121a.343. (2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls. (3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations. b) Reviewing and revising individualized educational programs (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency. (2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative: (i) Are involved in any decision about the child's individualized education program	**7. Private School Placements by LEA** 1. The state educational agency shall insure that an individualized education program is developed, maintained, and evaluated for each child placed in a private school by the state education agency or a local educational agency. 2. The agency which places or refers a child shall insure that provision is made for a representative from the private school (which may be the child's teacher) to participate in each meeting. If the private school representative cannot attend a meeting, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls (20U.S.C. 1413(2)(4)(B)). The local public education agency is responsible for providing or arranging for an individualized educational program to be written prior to admission into any special education program/service...including a nonpublic special education program. If a state or local education agency places a child in or refers a child to a private school or facility, the agency shall insure that a representative of the private school participates in each meeting. If the representative cannot attend a meeting, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls. By way of clarification, the Bylaw Training Module describes the jointly planned IEP. "Child placed through the	**7. Private School Placements by LEA** When a child is placed in a non-MCPS setting, in conformance with MSDE requirements, MCPS personnel will monitor the program delivery to the child to assure that participating schools meet MCPS program standards (Board of Education Resolution 834-78, "Policy on Education of Handicapped Children").

FEDERAL	STATE	LOCAL
(ii) Agree to any proposed changes in the program before those changes are implemented c) Responsibility Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the state educational agency.	Admission, Review, and Dismissal (ARD) process with state approval in nonpublic programs must have IEPs that are planned jointly by the local education agency (LEA) and the nonpublic program. There must be an arrangement whereby the nonpublic facility agrees to provide those things which the LEA determines the child needs. In some cases this means that LEAs work out IEPs with a number of different agencies. It also means that nonpublic agencies work out IEPs with a large number of LEAs." In accordance with the above policies and procedures, meetings to review and revise the child's IEP may be conducted by the private school or facility at the discretion of the public agency. Parents and an agency representative must be present at these meetings, be involved in any decision about the IEP, and agree to any proposed changes before these changes can be implemented (Amendments to 1979 Maryland Amended Annual Program Plan).	
8. Children Enrolled in Parochial or Other Private Schools (45C.F.R. 121a.348) If a handicapped child is enrolled in a parochial or other private school and recieves special education or related services from a public agency, the public agency shall: a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child in accordance with Section 121a.343 b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.	8. Children Enrolled in Parochial or Other Private Schools (1979 Maryland Amended Annual Program Plan) The state educational agency shall also insure that an individualized program is developed and implemented for each handicapped child who 1) is placed in or referred to a private school or facility by the state educational agency or a local agency 2) enrolled in a private or parochial school and receives special education and related services through the public agency.	8. Children Enrolled in Parochial or Other Private Schools
9. School Personnel Accountability (45C.F.R. 121a.349) Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.	9. School Personnel Accountability (State Bylaw 13.04.01.06D(4)(f)) None of the above shall be construed to cause any agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals or short-term goals and objectives.	9. School Personnel Accountability

FEDERAL	STATE	LOCAL
10. Rights of Teachers During IEP Process If a teacher feels that he/she should not be required to provide the services called for in the child's IEP, this is a matter between the teacher and the agency and would be handled in the same general manner as any other teacher-agency disagreement (Letter from Irvin to Perillo (April 4, 1978) *See also* letter from Irvin to Fox (May 3, 1978)).	10. Rights of Teachers During IEP Process	10. Rights of Teachers During IEP Process
11. Twelve-Month Programming OCR has issued a policy that 12 months programming is required under certain circumstances (Digest of Significant Case-Related Memoranda, April and May 1979 at p. 28). BEH is developing a standard policy statement on 12-month programming (Letter from Vlasak to Torres (August 8, 1978)). NOTE: On June 23, 1979, Judge Newcomer ruled in *Armstrong v. Kline* that a special education program in excess of 180 days must be provided by the state and/or LEA to any handicapped child who requires such a program.	11. Twelve-Month Programming LEAs need not provide 12-month programming. (Letter from Hornbeck to Bernardo (November 3, 1978)).	11. Twelve-Month Programming

CHAPTER 9

LEAST RESTRICTIVE ENVIRONMENT

I. Introduction

This chapter analyzes the federal[1] and state[2] mandates that handicapped children must be educated in the least restrictive environment. The mandates consist of five components. The first component generally provides that, to the maximum extent appropriate, handicapped children, with the use of supplementary aids and services, must be educated with children who are not handicapped (general policy). Second, LEAs must ensure that a continuum of alternative placements is available (continuum of alternative services). Third, educational placements must be located as close to the child's home as possible (location of placement). Fourth, placement decisions must be reviewed annually and must be based on the IEP (frequency of review of placement and relationship to IEP). Finally, handicapped children must be provided nonacademic services, e.g., physical education, recess, and lunch, with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped children (nonacademic services).

With three possible exceptions, MCPS's documents[3] pertaining to the least restrictive environment are consistent with the federal and state mandates.

The ACES materials explain that in developing a child's IEP the SARD team establishes objectives and recommends specific services. "For services not available at the school, a referral to the area must be completed." The underlined sentence is ambiguous and may be inconsistent with the first four components of the least restrictive environment requirement. Handicapped children cannot be referred to a placement that violates the least restrictive environment requirement simply because needed services are presently not available within the district.

The second area of inconsistency involves the provision of physical education and stems from the fact that the federal policies are inconsistent. Part B of EHA provides in part that a handicapped child may be denied physical education in the regular environment if the child is in a separate school or if the child needs specially designed instruction. Section 504, on the other hand, provides that even if the child is in a separate school or if specially designed instruction would be more appropriate, the handicapped child must be given the opportunity to participate in the regular environment. It appears that MCPS has adopted the Part B of EHA policy.

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1. Federal mandates are set out in Column 1 on pages 9-6 through 9-9.
2. State mandates are set out in detail in Column 2 on pages 9-6 through 9-9.
3. Local mandates are set out in detail in Column 3 on pages 9-6 through 9-9.

The final area of inconsistency involves a state policy which, if interpreted broadly and followed by MCPS, would violate the first component of the least restrictive environment mandate. The state policy provides that in making a decision concerning the least restrictive environment, "the needs of other children in the classroom may be considered." HEW has explained that the needs of other children may be taken into consideration to the extent that the presence of a handicapped child will be disruptive. If the state policy is limited to this circumstance, there is no inconsistency. However, if it is interpreted more broadly, there may well be a problem.

II. The General Policy

A. Overview of the Legal Mandates

Federal law generally provides that a handicapped child must be educated with nonhandicapped children to the maximum extent appropriate to the needs of the handicapped child.[4] Removal of handicapped children from the regular environment may occur only when the nature or severity of the handicap is such that education in the regular educational environment, with the use of supplementary aids and services, may not be achieved satisfactorily.[5] The absence of needed services, for example, interpreters for deaf children, is not an acceptable reason for denying a child the provision of an education in the regular environment.[6]

Where a handicapped child is so disruptive that the education of nonhandicapped children is significantly impaired, LEAs need not place the child in the regular environment.[7]

State law adopts the above standards but adds the following caveat: "In making this determination (least restrictive environment), the needs of other children in the classroom may be considered."[8]

B. Analysis of MCPS' Policies and Procedures

MCPS' policies and procedures are set out in Board of Education Resolution 834-78 "Policy on Education of Handicapped Children" and in ACES.

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[4] 45C.F.R. 121a.227(a), .121a.550 (b) (1); 45C.F.R. 84.34(a).
[5] 45C.F.R. 121a.550(b) (2); 45C.F.R. 84.34(a.)
[6] OCR memorandum from Michael Middleton to Cindy Brown concerning the Akron Public Schools (August 13, 1978).
[7] See 42FR42497 (August 23, 1977).
[8] State Bylaw 13.04.01.06E(1).

MCPS' general statement is consistent with the federal mandates. However, a statement in ACES is ambiguous and may be interpreted as negating the general practice. ACES states that:

> (In developing a child's IEP,) the multidisciplinary team (SARD)... selects priority objectives from among the suggestions made and recommends specific services. For services not available at the school, a referral to the area must be completed.[9]

The underlined sentence is ambiguous. The absence of certain services does not always justify removing a child from the regular educational environment. There must be legitimate administrative reasons for referral to another school. For example, assume that state law provides that where separate classes for mildly retarded children are appropriate a pupil-to-teacher ratio of 5 to 1 is acceptable. MCPS can, without violating federal or state law, transfer a mildly retarded child who would have attended School A to School B where a class with a 5 to 1 pupil-to-teacher ratio is housed.

The second area of possible inconsistency involves the state policy that permits LEAs to consider the needs of nonhandicapped children in making a placement for a handicapped child. Federal policy provides that when the presence of a handicapped child is so disruptive that the education of nonhandicapped children is significantly impaired, placement in the regular environment is not required. The state policy, if construed broadly and if adopted by MCPS, would be inconsistent with HEW's narrow interpretation of the circumstances under which the needs of nonhandicapped children may be considered.

III. Continuum of Alternative Placements

Federal law provides that an LEA must ensure that a continuum of educational services is available, including the following alternatives: (a) instruction in regular classes, (b) special classes, (c) special schools, and (d) home and hospital instruction.[10] Consistent with this mandate, state law describes six levels of services for handicapped children. The descriptions set out average minimum staffing ratios.[11] MCPS' documentation is consistent with the federal and state mandates. However, the written documents reviewed, in particular ACES, do not include explanations of the six levels of services. MCPS should consider including the applicable provisions of the state bylaw as an appendix to ACES. MCPS' practice of providing staffing ratios that are smaller than the minimum staff ratios suggested by the state to ensure the provision of a FAPE does not exceed federal mandates, although at first glance such an interpretation might be suggested.[12] Federal policy is that the appropriateness of a placement must be determined on an individual basis. Thus, minimum standards are helpful as a guide but must be exceeded in individual cases where more intensive services are necessary to ensure a FAPE.

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[9] ACES, p. 18.

[10] 45C.F.R. 121a.551.

[11] State Bylaw 13.04.01.06E(3). The term "average" refers to the average number for the entire LEA at that level of service. Therefore, in calculating the average class size for any group, you would calculate the average over the entire LEA for each individual level of service. Memorandum from Linda Jacobs to Local Directors of Special Education, May 28, 1979.

IV. Location of Placement

Federal law provides that each handicapped child's educational placement must be located as close as possible to the child's home.[13] Unless a child's IEP requires such other arrangement, the child must be educated in the school which he/she would attend if not handicapped.[14] Financial concerns may not be an excuse for making a placement decision.[15] For example, if a child could attend his/her own local school except for the need to provide an aide to assist him/her, it would be hard to justify sending that child to a more distant school.[16] The state policy is generally consistent with the federal mandates.[17]

MCPS' procedures are described and analyzed above under Section II of this chapter.

V. Frequency of Review and Relationship to IEP

Federal law provides that placement decisions must be reviewed annually and be based on the IEP.[18] State policy is consistent with the federal mandates.[19] MCPS' procedures regarding the annual review is consistent with federal and state mandates.[20] However, MCPS' practice of permitting referrals to the area coordinator when services are not available at the home school would be inconsistent with federal law if it were interpreted to permit a segregated placement (because of a lack of needed services at the regular school) even if the IEP calls for placement in the regular educational environment.

VI. Nonacademic Settings

Federal law concerning the provision of nonacademic services, in particular physical education, is internally inconsistent. Part B of EHA provides that LEAs need not provide physical education in the regular environment if (a) the handicapped child is in a separate school or (b) the child needs specially designed instruction.[21] Section 504, on the other hand, provides that LEAs may provide physical education in a separate setting to provide an appropriate placement.[22] However, Section 504 also provides that a handicapped child may not be denied the opportunity to participate in the regular physical education program even if a separate program would be more appropriate.[23] Further, Section 504 requires that a recipient that has in its jurisdiction a public or private institution serving handicapped children must ensure that they receive physical education in an integrated setting to the extent appropriate to their needs.[24]

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[12] Board of Education Resolution 834-78 "Policy on Education of Handicapped Children."

[13] 45C.F.R. 121.a552(a) (3). See also 45C.F.R. 84.34(a).

[14] 45C.F.R. 121.a552(c).

[15] BEH letter from Tom Irvin to Dr. Greg Frith, December 29, 1978.

[16] Id.

[17] See 1978 Maryland Amended Annual Program Plan. See also State Bylaw 13.04.01.06(f) (4).

[18] 45C.F.R. 121a.552(a).

[19] 1978 Maryland Amended Annual Program Plan.

[20] See ACES.

State law[25] and local documents[26] are consistent with Part B of EHA and are inconsistent with Section 504.

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[21] 45C.F.R. 121a.307(b).
[22] 45C.F.R. 84.37(c) (2).
[23] Id.
[24] See 42FR22691, Column 2 (May 4, 1977).
[25] 1978 Maryland Amended Annual Program Plan and Amendments to 1979 Maryland Amended Annual Program Plan.
[26] 1979 LEA Application for Assistance Under Part B of EHA.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Least Restrictive Environment

FEDERAL	STATE	LOCAL
1. General Policy To the maximum extent practicable, the LEA must provide special services to enable handicapped children to participate in regular educational programs (45C.F.R. 121a.227). To the maximum extent appropriate, handicapped children, including children in public and private institutions, must be educated with children who are not handicapped (45C.F.R. 121a.550(b)(1); 45C.F.R. 84.34(a)). Special classes, separate schooling, or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes, with the use of supplementary aids and services, may not be achieved satisfactorily (45C.F.R. 121a.550 (b)(2); 45C.F.R. 84.34(a)). Where a handicapped child is so disruptive in a regular classroom that the education of nonhandicapped children is significantly impaired, education in the regular environment would not be appropriate (42FR42497 (August 23, 1977)). OCR has explained that the provision of an interpreter is considered a "supplementary aid or service"; and, therefore, the school district must provide the service and educate the child in the regular educational environment unless it can demonstrate that such an instructional strategy would not be appropriate for the particular child (Memorandum from Middleton to Brown concerning the Akron Public Schools (August 13, 1978)).	1. General Policy The LEA must educate the child in the least restrictive appropriate educational program. Separate schooling, self-contained classes, or other removal of the child with special needs from the general education program may occur only when, and to the extent that, the student's special education in a less restrictive environment cannot be accomplished satisfactorily even with the use of supplementary aids and services. In making this determination, the needs of other children in the classroom may be considered (State Bylaw 13.04.01.06E; see also 1978 Maryland Amended Annual Program Plan and MARC decision).	1. General Policy Handicapped children will be placed in the most enabling instructional environment to accomplish the goals of the IEP. They will be given a chance to go to school in the most natural and integrated setting that is appropriate, i.e., whenever possible, in regular school settings with nonhandicapped children of the same age. When students can profit from full-time, part-time, or occasional participation in the regular program, schools are expected to make reasonable accomodations to the specific needs of the handicapped child to promote appropriate integration (Board of Education Resolution 834-78). In developing a child's IEP, the multidisciplinary team (SARD) establishes objectives and recommends specific services. For services not available at the school, a referral to the area must be completed (ACES on page 18). Handicapped children have the right to placement in the least restrictive learning environment, as much as possible with nonhandicapped children (ACES, Appendix D).
2. Continuum of Alternative Placements LEAS must ensure that a continuum of alternative placements is available, including the following alternatives: 1) instruction in regular classes (regular class with indirect services in regular class, regular services with direct services and instruction within regular class, regular class with resource room services); 2) special	2. Continuum of Alternative Placements State law describes levels of special education servces for handicapped children Level I - The handicapped child who may be appropriately served in the general education program receiving supplementary services. Minimum staffing ratio is 1 FTE professional for each 150 nonspecial education teachers employed by the LEA.	2. Continuum of Alternative Placements A continuum of alternative educational services will be provided so that students can be placed in public or private programs appropriate to their individual needs, considering the intensity of services, instructional adaptations, and specialized services (Board of Education Resolution 834-78).

FEDERAL

classes (self-contained special classroom with part-time instruction in a regular class, self-contained class full-time in a regular school, self-contained special class class in a special public day school facility); 3) special schools (self-contained special class in private day facility; public or private residential facility), and 4) home instruction and hospital programs (45C.F.R. 121a.551; DAS Bulletin No. 14 on page 19 (7/79)).

STATE

Level II - The handicapped child who may be appropriately served by receiving service through the special education program not to exceed an average of one hour per day. Services may be provided on an intermittent or continuous basis. Maximum caseload must be an average of 60 handicapped children per FTE professional.

Level III - The handicapped child who may be appropriately served by receiving special educational services on a regular basis not to exceed three hours per day. In addition, resource assistance would be provided to the regular classroom teacher in order to enhance the child's achievement. The maximum case- load must be an average of 20 different handicapped students per FTE certified special education teacher or 30 students if an aide is used.

Level IV - The handicapped child who may be appropriately served by receiving special educational services up to six hours per day. Special education is provided by a special education teacher in a special class within a general education facility and related services, as described in the Individual Education Plan. The maximum class size at the elementary level must be an average of 10 handicapped students per FTE teacher or 13 if FTE aide is provided.

Level V - The handicapped child who requires a comprehensive special education setting for his entire school day in a special wing or day school. Services are provided in a comprehensive special educaton setting which includes special equipment and related services. The maximum class size will be an average of six handicapped students per FTE teacher or nine if a FTE aide is provided. For Level V children with significant physical impairments, the class size must be an average of seven handicapped children per teacher and aide.

Level VI - The handicapped child who requires 24-hour special education programming and personal care. This level is designed to provide instruction, treatment, or both, on a short- or long-term basis in a residential setting with all necessary services and equipment. Maximum class size must be an average of four to one teacher or seven to one with an aide present.

LOCAL

Any child suspected of requiring Level 5, 6, or 7 services must be referred to the area director of continuum education (ACES on page 17).

Student/staff ratios will be commensurate with the needs of the different levels of services provided. The Board of Education supports staffing ratios that are appropriate to the individualized needs of children to the extent feasible, even if they are smaller than maximum staffing ratios permitted by the MSDE (Board of Education Resolution 834-78).

3. Location of Placement

Each handicapped child's educational placement must be as close as possible to the child's home (45C.F.R. 121a.552(a)(3); see also 45C.F.R. 84.34(a)).

Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not handicapped (45C.F.R. 121a.552(c)).

BEH has responded to two letters concerning the issue of the location of a placement. The first inquiry is whether busing of mildly handicapped children to a school district offering an appropriate special education program not offered by the LEA conflicts with Part B of EHA. BEH explained that the act encourages multi-district cooperation in order to develop sufficient size and scope for programs, especially in the more rural and sparsely populated areas of the country (Letter to Senator Bayh from Dr. Vlasak 8/22/78).

The second inquiry is "(a) does Part B of EHA require that, without exception, a handicapped child must attend the school closest to home and which the child would attend if not handicapped and (b) can financial concerns be considered in making placement in the school closest to the child's home is one of several factors to be considered when making a placement decision. Other factors are that each child's placement must be determined annually and individually and must be based on the IEP. Financial concerns cannot be the basis for making a placement decision. For example, if a child could attend his own local school except for the need to provide an aide to assist him, it would be hard to justify sending that child to a more distant school (Letter from Irvin to Dr. Frith 12/26/78).

Other Program Provisions - Home and hospital instruction - short-term itinerant instructional services are provided to students with physical disabilities or in emotional crisis (maximum 60 consecutive school calender days).

3. Location of Placement

1978 Maryland Amended Annual Program Plan adopts Part B of EHA policies set out in Column 1. State Bylaw 13.04.01.06F(4) under "Special Rules Applicable to Certain Nonpublic Placement" generally provides that "the program is located in or within daily commuting distance from the child's place of residence."

3. Location of Placement

(See Point 1.)

FEDERAL	STATE	LOCAL
4. Frequency of Review of Placement and Relationship to IEP Placements must be (a) reviewed annually, (b) based on the child's IEP, and (c) take into consideration the potential harmful effects on the child or the quality of the services.	4. Frequency of Review of Placement and Relationship to IEP The 1978 Maryland Amended Annual Program Plan adopts Part B of EHA policies set out in Column 1..	4. Frequency of Review of Placement and Relationship to IEP ACES requires annual review after initial 60-day review (see chapter on IEP).
5. Nonacademic Settings Handicapped children must be provided nonacademic and extracurricular services and activities, including meals, recess, physical education, etc., with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped children (45C.F.R. 121a.553; 45C.F.R. 84.34(b)). The Part B of EHA regulations contain detailed policies concerning physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program unless (1) the child is enrolled full-time in a separate facility or (2) the child needs specially designed physical education as prescribed in the IEP (45C.F.R. 121a.307(b)). Section 504 generally provides that recipients may offer physical education classes in separate settings if consistent with the least restrictive alternative standards. However, no qualified handicapped person may be denied the opportunity to compete for teams or to participate in courses that are not separate or different (45C.F.R. 84.37(c)(2)).	5. Nonacademic Settings The general policy set out in the 1978 Maryland Amended Annual Program Plan (see above under Point 1) applies in particular to nonacademic and extracurricular services, including meals, recess period, and physical education (Amendments to 1979 Maryland Amended Annual Program Plan).	5. Nonacademic Settings Students placed in special education self-contained programs participate in the regular education programs in all appropriate academic areas and in most cases are able to attend regular art, music, physical education, home economics, and shop classes (1979 LEA Application for Assistance Under Part B of EHA).

CHAPTER 10

NONPUBLIC AND RESIDENTIAL PLACEMENTS AND TRANSPORTATION THERETO

I. Introduction

Under federal and state law, an LEA must provide directly or make arrangements with other entities for the provision of a FAPE to handicapped children residing in its jurisdiction. In addition, a parent may choose to place a child in a private school, even though the school district has made available to the child a free appropriate public education.

This chapter analyzes the federal and state mandates[1] pertaining to nonpublic placements by LEAs and parents, including placements in residential facilities. The chapter also analyzes the mandates concerning the provision of transportation to such placements.

II. LEAs Responsibility with Respect to Children Referred to or Placed in Nonpublic Schools

A. Overview of the Legal Mandates

Whenever an LEA places or refers a handicapped student to a private school or facility to satisfy the FAPE requirement, the following general principles must be adhered to:

1. The handicapped child must receive special education and related services.

2. The placement must be

   a) In conformance with the child's IEP
   b) At no cost to the child's parents
   c) At an approved school

3. The handicapped child placed in the private school must be afforded all the rights of handicapped children served by the public agency.

4. The LEA remains responsible for compliance with the federal mandates.[2]

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[1] The federal mandates are set out on pages 10-6 through 10-11, Column 1. The state mandates are set out in Column 2, on pages 10-6 through 10-11.

[2] 45C.F.R. 121a.401(b) and 121a.347. See also 45C.F.R. 84.33 (c) (3).

The state bylaw contains comprehensive policies governing nonpublic school placements by LEAs.[3] The bylaw is supplemented by a comprehensive handbook prepared by the state.[4] In general, the bylaw reiterates the federal mandates and sets out specific procedures which LEAs in the state must follow. The main feature of the bylaw provides that all nonpublic school placements must be approved by MSDE.

One state policy which may be inconsistent with federal law provides that the parents of a child placed in a nonpublic program by the LEA must pay an amount reasonably estimated to represent "other nonmedical costs" which would normally be incurred by parents in caring for a child in a local public school and living at home.[5]

B. Analysis of MCPS' Documentation

MCPS' practice is to act in conformity with the policies for nonpublic school placements issued by the MSDE and to monitor the program operated by the nonpublic school to assure compliance with the federal and state mandates.[6] Thus, MCPS is consistent with federal mandates to the extent state policy is consistent with federal mandates. With one exception, state policy and, therefore, MCPS procedures appear to be consistent with federal law. The one exception, which was described above, involves the charging of parents certain costs for caring for children placed in nonpublic programs.

Although MCPS's procedures are generally consistent with federal and state mandates, they may not be adequately disseminated to MCPS personnel. ACES, one of MCPS primary sources for communicating directives to personnel, makes no mention of the specific state or federal mandates. The failure to include a detailed description of the federal and state mandates in ACES or an appendix thereto increases the possibility that practices within the school will be inconsistent with such mandates.

III. Residential Programs

The federal regulations contain specific provisions governing placements or referrals to residential programs. Under these regulations, residential programs, including nonmedical care and room and board, must be provided by the LEA at no cost to the handicapped child's parents.[7]

The MSDE policy and MCPS procedures respecting residential placements are discussed above under Section II.

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[3] State Bylaw 13.04.01.06F.

[4] MSDE Nonpublic School Tuition Assistance Guide.

[5] OCR recently issued a letter of findings against the Maryland State Department of Education concerning this issue (February 26, 1980). Negotiations are presently in progress. The state bylaw formerly provided that parents must pay "raw food" costs for children placed in nonpublic programs. In response to federal directives, this policy was repealed.

[6] Board of Educaton Resolution 834-78 "Policy on Education of Handicapped Children." (December 5, 1978). An outdated MCPS regulation (335-4) should be repealed or revised.

[7] 45C.F.R. 121a.302 and 45C.F.R. 84.33(c)(3).

IV. Placements By Parents

Federal and state law provide that if an LEA makes available a FAPE but the parents choose to send their child to a nonpublic school, the LEA is not financially liable.[8] MCPS documentation is consistent with the federal and state mandates.

V. Placements for Noneducational Reasons

When a nonpublic school placement, e.g., a residential program, is necessitated by noneducational reasons, e.g., the child's home condition, federal policy is that the LEA must still make available a FAPE. However, where residential placement is required, the LEA need not pay for room and board. The federal policy is silent with respect to the LEA's obligation to pay for the educational costs of the residential program.[9]

State law provides that the SEA may authorize reimbursement of the costs of the educational program up to the amount equivalent to the cost of the school program a handicapped child would have attended while living at home.[10]

MCPS procedures are consistent with state law. Since the federal policy regarding placements for noneducational reasons is unclear (see above), it is impossible to determine whether the state and local policies are acceptable. MCPS or MSDE should seek a clarification from OE and OCR.

VI. Transportation to Nonpublic Placements

A. Overview of Legal Mandates

Section 504 provides that when an LEA places or refers a handicapped child to a program not operated by the recipient, the recipient must ensure that "adequate transportation" to and from the program is provided at no greater cost than would be incurred if the child had attended a program operated by the recipient.[11]

Part B of EHA defines the term "related services" as including transportation.[12] Thus, where transportation is required to assist a handicapped person to benefit from special education, in accordance with the IEP, it must be provided by the LEA at no cost.[13] BEH explained that children placed in residential programs must, at a minimum, be provided transportation at the beginning and end of the school term and for scheduled school holidays and recesses. Additional transportation should be determined on a case-by-case basis.[14]

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[8] 45C.F.R. 121a.403, 45C.F.R. 84.33(c) (4), and 1978 Maryland Amended Annual Program Plan.

[9] See section-by-section analysis accompanying the 504 regulations, 42FR22691 (May 4, 1977) and letter from Tyrell to Schwartz, May 8, 1978).

[10] State Bylaw 13.04.

[11] 45C.F.R. 84.33(c) (2). See also 45C.F.R. 84.37 (6) wherein "transportation" is included as a "nonacademic service."

[12] 45C.F.R. 121a.13.

[13] 45C.F.R. 121a.300.

OCR has explained that the LEA (and not the parents) must provide the necessary transportation. An LEA can make an arrangement with a parent to assume its responsibility in exchange for reimbursement of costs. The LEA can not require that the parents enter into such an arrangement.[15]

The state bylaw[16] provides that daily transportation or reimbursement must be provided for attendance at nonresidential facilities in a 50-mile radius. The bylaws also provide that handicapped children living beyond the 50-mile radius are eligible for two round trips each year, but certain children attending residential programs shall have transportation to and from their homes on weekends.[17]

B. Analysis of MCPS Documentation

MCPS' procedures regarding transportation of handicapped students are generally set out in MCPS Regulation 215-1 which was reissued on September 12, 1979.[18]

In several respects, MCPS' regulation pertaining to the transportation of handicapped children to private residential programs is inconsistent with federal mandates. In other respects, it is not sufficiently comprehensive.

MCPS' practice of limiting to two the amount of trips for which reimbursement will be provided for residential placements outside a 50-mile radius is inconsistent with the minimum federal requirements described above.

Second, to the extent that MCPS Regulation is construed as requiring that parents of handicapped students make their own transportation arrangement such a practice is inconsistent with Section 504. LEAs may not force parents to transport their own children.

Third, the documentation regarding transportation to summer school may be inconsistent with Section 504 and Part B of EHA if OCR and BEH conclude that 12-month scheduling is required.

MCPS' documentation is not sufficiently comprehensive because it does not provide, as required by federal law, that the amount and type of transportation provided must be consistent with the IEP.

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[14] Letter from Tyrell to Dorman (10/4/78) see also a recent Letter of Findings issued against the Maryland State Department of Education (February 26, 1980), which found this policy to be in violation of Section 504.

[15] Letter from OCR to Bernstein (1978).

[16] State Bylaw 13.04.01.03H.

[17] *Ibid.*

[18] See also Board of Education Resolution 834-78 "Policy on Education of Handicapped Children" (December 5, 1978).

VII. LEA Responsibility with Respect to Handicapped Children Attending Private Schools Not Placed or Referred by LEAs

Under Part B of EHA, public schools must provide genuine opportunities to children attending private schools to participate in special education programs.[19] The regulations contain eight major requirements concerning this responsibility. The state policy is generally consistent with the federal policy.[20] MCPS procedures pertaining to the diagnosis of children attending nonpublic schools is generally consistent with federal and state mandates.[21] However, no written MCPS documentation was located concerning the delivery of services to handicapped children attending nonpublic schools.

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19. 45C.F.R. 121a.452-460.
20. 1978 Maryland Amended Annual Program Plan, 1979 Maryland Amended Annual Program Plan, and Amendments to 1979 Maryland Amended Annual Program Plan.
21. Memorandum entitled "Procedures for Requesting Diagnostic Services for Nonpublic School Students" (November, 1978).

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Nonpublic and Residential Placements and Transportation Thereto

FEDERAL	STATE	LOCAL
1. LEAs' Responsibilities with Respect to Children Referred to or Placed in Nonpublic Schools Handicapped children placed in or referred to a private school or facility by an LEA must be: (1) provided special education and related services, (2) in conformance with the IEP requirements, (3) at no cost to the parents, (4) at a school which meets the standards that apply to state and local educational agencies, and (5) afforded all the rights of a handicapped child who is served by the public agency (45C.F.R. 121a.401(b). See also 45C.F.R. 84.33(b)(3)). When referrals are made by LEAs to nonpublic schools, the LEAs remain responsible for compliance with the federal mandates (Id.; see also 45C.F.R. 121a.347).	1. LEAs' Responsibilities with Respect to Children Referred to or Placed in Nonpublic Schools (13.04.01.06F; see also MSDE "Nonpublic School Tuition Assistance Guide" and 1978 and 1979 Maryland Amended Annual Program Plan). The state bylaw contains comprehensive policies regarding placements in nonpublic placements. Certain of the major policies are set out below. First, the SEA approves all nonpublic school placements. Second, the placements are for one year. Third, the nonpublic schools must be approved by the SEA. Fourth, a child recommended for nonpublic placement must be afforded all the rights provided by state and federal laws and their governing regulations. Fifth, in arranging for special education services, the parents of the child must pay an amount reasonably estimated to represent other costs which would normally be incurred by parents in caring for a child enrolled in a local public school and living at home. Sixth, the placement eligibility creteria include, among others, the following: the child is being recommended for placement into a nonpublic special education program that is appropriate to his verified educational needs and is in the least restrictive appropriate setting. Seventh, LEAs must review placement in nonpublic school facility or program.	1. LEAs' Responsibilities with Respect to Children Referred to or Placed in Nonpublic Schools When a child is placed in a non-MCPS setting, in conformance with MSDE requirements, MCPS personnel will monitor the program delivered to the child to assure that participating schools meet MCPS program standards (Board of Education Resolution 834-78 "Policy on Education of Handicapped Children." See also MCPS Regulation 335-4 entitled "Referral for tuition Assistance for Nonpublic School Placements of Handicapped Children." (This regulation is outdated and should be revised.)).
2. Residential Placements If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian (45C.F.R. 121a.302; 45C.F.R. 84.33(c)(3)). BEH and OCR, in a joint letter, explained that LEAs and SEAs may not charge parents "raw food" costs when a child is placed in or referred to a residential program by the LEA (Letter from Tatel and Martin to Hornbeck, August 29, 1978).	2. Residential Placements State policy is set out under Point 1 above.	2. Residential Placements Local policy is set out under Point 1 above.

FEDERAL	STATE	LOCAL
3. Placements By Parents If a FAPE is made available by the LEA for a handicapped child and the parent chooses to place the child in a private school, the LEA is not required to pay for the child's education. The handicapped children in those private schools can participate in special education and related services offered by the LEA if the parents of those children so desire. Disagreements are subject to the due process procedures (45C.F.R. 121a.403; 45C.F.R. 84.33(c)(4)).	3. Placements By Parents When a handicapped child is offered a FAPE and the parent chooses to enroll their child in a private school, the SEA and LEA are not financially liable (1978 Maryland Amended Annual Program Plan).	3. Placements By Parents (MCPS procedures incorporates by reference state policy. See Point 1 above.)
4. Placements for noneducational Reasons When residential care is necessitated, not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board. (42FR22691 (May 4, 1977)). BEH has explained that if a child is placed for noneducational purposes the LEA is still responsible to make FAPE available. This may be accomplished through a teacher in a hospital or a visiting instructor (Letter from Tyrrel to Schwartz 5/9/78).	4. Placements for noneducational Reasons (13.04.01.06F(2)(3)) When placements are made for noneducational reasons, the SEA may, upon the request of the LEA, approve the placement in an alternative special education program in cooperation with the child's family and the appropriate state or local agency responsible for the child's care. The SEA may authorize reimbursement of the cost of the educational program up to the amount equivalent to the cost of the school program he/she would have attended while living at home.	4. Placements for noneducational Reasons (MCPS procedures incorporates by reference state policy. See Point 1 above.)
5. Transportation to Nonpublic Placements Section 504 states that if a recipient places a handicapped person in or refers such person to a program not operated by the recipient, the recipient must ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient (45C.F.R. 84.33(c)(2)). Neither the EHA statute nor the EHA regulations set minimum numbers of trips home from a residential facility. However, such children should be provided transporta-	5. Transportation to Nonpublic Placements (State Bylaw 13.05.07) (13.05.07.01B) (1) For purposes of pupil transportation, a handicapped pupil is one who needs special transportation arrangements to a facility to which reimbursement shall be provided for eligible handicapped pupils from established school vehicle stops to the appropriate school and return from the school to the established school vehicle stops. Transportation shall be cooperatively considered by the Admission,	5. Transportation to Nonpublic Placements MCPS or privately contracted transportation will be provided so that handicapped children can be moved to and from school in a reasonable time. The special needs of the handicapped child will be taken into account when planning for transportation needs (Board of Education Resolution 834-78 "Policy on Education of Handicapped Children"). According to the following criteria set out in MCPS Regulation 215-1, financial aid for transportation is provided to parents of pupils for whom placement in a private school and payment of tuition has been approved by the State Department of Education.

FEDERAL

tion as a "related service" to and from the school at the beginning and end of the school term and for scheduled school holidays and recesses at a minimum; but state policies should allow case-by-case determinations of how often additional transportation should be provided.

OCR has explained that parents may not be required to transport their children to appropriate placements located in other school districts (Letter from OCR to Bernstein, 1978).

STATE

Review, and Dismissal Committee in charge of special education placement and the office of transportation in the local education agency. Appropriate facilities are:
- (a) Public schools
- (b) State Department of Education approved nonpublic schools
- (c) State institutions
- (d) State schools

(2) The following are the distance limitations for the transportation of handicapped pupils:
- (a) Handicapped pupils attending a State Department of Education approved school during the regular school year may be provided daily transportation if they live within a 50-mile distance of that school.
- (b) Handicapped pupils living beyond the limit established in Section .01.3(2)(a) above shall be eligible for two round trips each school year.
- (c) Certain resident handicapped pupils attending State Department of Education approved public or nonpublic schools shall have transportation available to and from their home areas on weekends.

(3) A driver aide may be employed to serve on each vehicle that transports mentally, physically, or emotionally handicapped pupils.

(State Bylaw 13.05.08)

(13.05.08.01B)

(1) The local school system shall arrange transportation for handicapped pupils through the local transportation office in cooperation with the local special education office.

(2) The regular school year for handicapped pupils shall be approximately the same as the regular public school year of the local school system in which the pupil resides. When weekend transportation is provided, the local

LOCAL

(1) Daily transportation within a 50-mile radius may be provided. (Exceptions require approval by the state supervisor for pupil transportation.)

(2) Parents of pupils who are in residential placement in a location beyond the 50-mile limit are eligible for reimbursement for the cost of two round trips each school year.

(3) A milage allowance is established by the Board od Education for pupils who are entitled to daily transportation.

(4) Parents are expected, where possible, to form car pools so that several pupils may be transported at the approved mileage rate.

(5) Financial support is not available for transportation to summer school.

school system making the transportation available shall establish pickup and discharge points along major highways within reasonable distance of the pupil's home.

(3) Driver aides shall be assigned only when necessary. More than one aide per vehicle may be funded based upon requests from the local school systems to the State Department of Education explaining the circumstances that justify the exception.

(13.05.08.01D(2)(d))

Nonapproved programs include:

(d) Transportation of adults, except persons between 18 and 20 years old who are enrolled in an approved regular or special education daytime school program and parents who are participating in special education parent/infant programs.

(13.05.08.02A(4))

(4) The placement of handicapped children in facilities outside the county of residence when the distance from the home to the school is greater than 50 miles changes the service from daily transportation to a less frequent service based upon distance.

(13.05.08.02D)

Transportation of Handicapped Children.

Transportation of handicapped pupils to schools designated and approved by the State Department of Education shall be funded as follows:

(1) Transportation to schools within a 50-mile distance of the pupil's home shall be provided under the same conditions applied to regularly enrolled handicapped pupils.

FEDERAL	STATE	LOCAL
	(2) A school may operate as a residence and request weekly transportation instead of daily transportation. If the number of pupils enrolled is sufficient, a weekly program shall be arranged and operated by a local school system selected by the State Department of Education. Total costs for this service shall be payed by the state and shall include purchase of the necessary vehicle, operating costs based upon the per-mile factor, and driver and aide salaries. A local school system within a 50-mile distance may provide either daily or weekly transportation, but not both. (3) For pupils assigned to schools which would require traveling in excess of 50 miles one way and which provide no weekly transportation for residents, two round trips per year from the home to the school at tourist class air flight fare shall be allowed. The local school system shall pay the parties involved and verify the rates before requesting state reimbursement. (4) When it is not possible to provide transportation with existing equipment, the local school system may pay the parents of the handicapped children to provide the service. The State Department of Education shall reimburse the local school system an amount as specified in the table of rates.	
6. LEAs' Responsibility with Respect to Handicapped Children Attending Private Schools Not Placed or Referred by LEAs (45C.F.R. 121a.452-.460) a) LEAs must provide genuine opportunities to participate in special education and related services designed to meet the needs of private school handicapped children residing in its jurisdicition (45C.F.R. 121a.452). b) The number and needs of handicapped students attending private schools must be determined after consultation with persons knowledgeable of the needs of these children (45C.F.R. 121a.453).	6. LEAs' Responsibility with Respect to Handicapped Children Attending Private Schools Not Placed or Referred by LEAs (1978 and 1979 Maryland Amended Annual Program Plan, Amendments to 1979 State Plan) The state has adopted the federal policies set out in (a) and (c)-(h). There is no state policy requiring consultation with persons knowledgeable about the needs of private school handicapped children before making determinations concerning, among other things, their needs.	6. LEAs' Responsibility with Respect to Handicapped Children Attending Private Schools Not Placed or Referred by LEAs Requests for diagnositc services for children attending nonpublic schools should be referred to the Diagnostic and Professional Support Team and should be coordinated through authorized persons employed by the nonpublic school (Memorandum entitled "Procedure for Requesting Diagnostic Services for Nonpublic School Students" November, 1978).

FEDERAL	STATE	LOCAL
c) Special services provided to private school handicapped children may be different than those provided to public school handicapped children if: (1) the differences are necessary to meet the needs of such children and (2) the services provided are comparable to those provided to public school children (45C.F.R. 121a.455). d) Public school personnel may be made available in other than public school facilities only to the extent required to provide necessary services and only when those services are not normally provided by the private school (45C.F.R. 121a.456). e) LEAs must maintain administrative control and direction over the services and equipment provided (45C.F.R. 121a.456 and .457). f) Part B of EHA funds may not be used to pay for construction or private school teacher's salaries except for services performed outside regular hours of duty and under public supervision and control (45C.F.R. 121a.456). g) Private school children enrolled in programs carried out in public facilities may not be segregated on the basis of religious affiliation 45C.F.R. 121a.458. h) Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private schools (45C.F.R. 121a.460).		

CHAPTER 11

NOTIFICATION

I. Overview of Legal Mandates[1]

One of the most important procedural requirements contained in the federal and state laws is the notification provision. Section 504 provides that recipients must take steps annually to notify handicapped persons and their parents of the recipient's duty to provide a free appropriate public education to every handicapped person within its jurisdiction, regardless of the severity of a child's handicap.[2]

The state bylaw provides that each LEA must provide the public with information regarding special education programs and related services consistent with the agency's public information policy.[3]

II. Analysis of MCPS Documentation[4]

MCPS employs several procedures for communicating its obligations under Section 504 and Part B of EHA to handicapped children and their parents. The most notable are the child identification procedures discussed under Chapter 2 and the dissemination of pamphlets such as *Legal Rights: A Handbook for Parents (MSDE)* and *Is Your Child Handicapped? Parent-to-Parent Advice on What to Do*. MCPS public information policy is set out in MCPS Regulation 260-1.

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[1] The federal mandates appear in Column 1 on page 11-2. The state mandates are set out in Column 2.

[2] 45C.F.R. 84.32 (b).

[3] State Bylaw 13.04.01.04E

[4] The local documentation is set out in Column 3 on page 11-2.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Notification

FEDERAL	STATE	LOCAL
LEAs must annually take appropriate steps to notify handicapped persons and their parents of the recipient's duty to provide a free appropriate public education to each handicapped person within the recipient's jurisdiction, regardless of the severity of a child's handicapping condition (45C.F.R. 84.32(b)).	The LEA must provide the public with information regarding special education programs and related services consistent with the agency's public information policy (State Bylaw 13.04.01.04E).	See Child Identification Procedures Chapter 2. MCPS's public information policy is set out in Regulation 260-1 (April 25, 1979).

CHAPTER 12

PERSONNEL DEVELOPMENT

I. Overview of the Legal Mandates[1]

Applications submitted by LEAs under Part B of EHA must include procedures for implementing and using a comprehensive system of personnel development established by the SEA.[2]

The state bylaw provides that each LEA is responsible for the implementation of a personnel development plan which includes the in-service training of general and special education, instructional and related services, and administrative and support personnel.[3]

II. Analysis of MCPS' Documentation

MCPS' documents respecting the design, implementation, and use of a comprehensive system of personnel development are consistent with the federal and state mandates.

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[1] The federal mandates are set out in Column 1 on page 12-2. The state mandates are set out in Column 2.

[2] 45C.F.R. 121a.224. See also 45C.F.R. 121a.380-.387.

[3] State Bylaw 13.04.01.04I.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Personnel Development

FEDERAL	STATE	LOCAL
Applications submitted under Part B of EHA must include procedures for implementing and using the comprehensive system of personnel development established by the SEA (45C.F.R. 121a.224. See also 45C.F.R. 121a.380-387, which describe the components of the SEA's plan (scope of the system, participation of other agencies and institutions, in-service training, personnel development plan, dissemination, adoption of educational practices, evaluation, and technical assistance to LEAs)).	Each LEA is responsible for the implementation of a personnel development plan which includes the in-service training of general and special education, instructional and related services, and administrative and support personnel (State Bylaw 13.04.01.04I).	In-service training programs will be developed so that general educators can acquire a basic understanding of handicapped children and their families and learn to work effectively with the handicapped. Special education personnel must keep informed of changes produced by technological improvement and of new educational strategies and matrials resulting from research and demonstration activities. Opportunities for continuing professional development based on identified individual or group staff needs will be provided (Board of Education Resolution 834-78 "Policy on Education of Handicapped Children" (December 5, 1978)). In order to assess MCPS' personnel development needs, a questionnaire was given to each area and central office continuum education staff member. In addition, each of the in-service trainers distributed questionnaires to each of the local schools they work in. The results are then tabulated and returned to continuum education staff development office for planning. In order to implement the state's Comprehensive System of Personnel Development, an in-service coordinating committee was formed. The committee announces the MSDE guidelines to all reviewed requests for in-service, prioritized requests and submitted these proposals to the MSDE for funding (1979 MCPS Application for Assistance Under Part B of EHA). See also MCPS Regulation 440-7 (August 24, 1979) "Staff Development Programs for Supproting Services Employees" and MCPS Regulation 440-3 (July 17, 1979) "Establishing and Implementing an In-service Course for Teachers."

CHAPTER 13

PRIORITIES

I. Overview of the Legal Mandates[1]

Congress recognized that in the initial years of Part B of the EHA program of assistance there might be major controversies concerning the distribution of the limited federal aid to the various categories of handicapped children. To avoid such a "battle," Congress devised a system of priorities. Under the system, LEAs must use Part B of EHA funds in the following order of priorities:

A. To provide a FAPE to first priority children (see table for definition)

B. To provide a FAPE to second priority children (see table for definition)

C. To meet other requirements[2]

The state plan is inconsistent with the federal provisions. It confuses the priority provision (which prescribes which children will receive the limited assistance provided under Part B of EHA) with the provisions specifying the timelines for providing a FAPE to all qualified handicapped persons.[3]

II. Analysis of MCPS' Documents[4]

MCPS' documentation is consistent with the federal mandates specifying the priority distribution of Part B of EHA funds.

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1. The federal mandates are set out in Column 1 on page 13-2. The state mandates appear in Column 2.
2. 45C.F.R. 121a.321.
3. 1978 Maryland Amended Annual Program Plan. See also the 1979 Maryland Amended Annual Program Plan.
4. The local documents are set out in Column 3 on page 13-2.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Priorities in the Use of Part B Funds

FEDERAL	STATE	LOCAL
Each LEA must use funds received under Part B of EHA in the following order of priorities: (1) To provide a FAPE to first priority children, i.e., handicapped children who are in an age group for which the state must make available a FAPE and are not presently receiving any education (2) To provide a FAPE to second priority children, i.e., handicapped children receiving an inadequate education (3) To meet other requirements (Note: after September 1, 1978, there should be no second priority children since Part B of EHA requires that all children receive a FAPE as of that date) (45C.F.R. 121a.321).	By September 1, 1978, all first priority children, aged 5-20, must have available to them a FAPE. By September 1, 1978, all second priority children must have available to them at least an interim FAPE (1978 Maryland Amended Annual Program Plan. See also 1979 Maryland Amended Annual Program Plan).	MCPS meets the needs of all Priority 1 and 2 children aged 5-20. Part B of EHA will be used with respect to first priority children who have not been previously identified. Part B of EHA funds will also be used for first priority children aged 0-4 (1979 LEA Application).

CHAPTER 14

PUBLIC PARTICIPATION

I. Overview of the Legal Mandates[1]

Part B of EHA includes specific provisions ensuring participation by the public with respect to the design, implementation, and evaluation of programs for handicapped students. Each application for assistance under Part B of EHA submitted by an LEA must (1) provide for making the application and all documents related thereto available to the general public and (2) make all evaluations available.[2]

II. Analysis of MCPS' Documents[3]

MCPS' policies, as set out in its regulations[4], are consistent with the federal mandates.

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[1] The federal mandates are set out in Column 1 on page 14-2.

[2] 45C.F.R. 121a.234.

[3] The MCPS policies are set out in Column 3 on page 14-2.

[4] See MCPS Regulation 201-7 (December 4, 1972) "Public Participation in Meetings of the Board of Education"; MCPS Regulation 270-10 (June 21, 1974) "Community Participation in Decision-Making at the Local School"; MCPS Regulation 270-9 (November 3, 1972) "Community Involvement-Inquiries and Complaints"; MCPS Regulation 260-1 (April 25, 1979) "Public Information (MCPS Policy)"; and MCPS Regulation 260-2 (June 22, 1979) "Public Information (State Law)." See also a letter from the superintendent to organizations representing handicapped children concerning the formation of a Continuum Education Advisory Committee to increase public participation (April 19, 1979).

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Public Participation

FEDERAL	STATE	LOCAL
Each LEA application must provide for making the application and all documents related to the application available to parents and the general public and ensure that all evaluations and reports are public information (45C.F.R. 121a.234).		MCPS Regulation 201-7 (December 4, 1972) "Public Participation in Meetings of the Board of Education." MCPS Regulation 270-10 (June 21, 1974) "Community Participation in Decision-Making At the Local School." MCPS Regulation 270-9 (November 3, 1972) "Community Involvement-Inquires and Commplaints." MCPS Regulation 260-1 (April 25, 1979) "Public Infromation (MCPS Policy)." MCPS Regulation 260-2 (June 22, 1979) "Public Information (State Law)." These regulations provide, among other things, that documents such as the LEA application, all documents related thereto, evaluations, and reports are public information.

CHAPTER 15

RELATED SERVICES

I. Overview of the Legal Mandates[1]

In general, LEAs must provide a free appropriate public education to each handicapped person of school age residing in its jurisdiction, regardless of the severity of a person's handicap.[2] An appropriate education includes the provision of special education and related services.[3] This chapter analyzes the meaning of the term "related services."

Part B of EHA states that the term "related services" means:

> Transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.[4]

The definition of the term "related services" set out in the State Bylaw is virtually identical to the definition adopted by OE in Part B of EHA regulations.[5]

In the past several years, BEH has issued numerous policy interpretations in correspondence with SEAs and LEAs explaining the meaning of the term "related services." For example, BEH and OCR have issued clarifications concerning medical services, chiropractic services, psychotherapy, hearing aids, optometric services, neurological examinations, evaluations performed by optometrists, and catheterization.[6]

II. Analysis of MCPS' Documents[7]

MCPS' procedures, as set out in ACES, are consistent with federal and state mandates since they adopt the state's definitions, which, as explained above, are consistent with federal mandates. However, ACES is not sufficiently comprehensive because it does not contain or make reference to recent clarifications by BEH and OCR.

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[1] The federal mandates are set out in Column 1 on pages 15-2 through 15-4. The state mandates are set out in Column 2 on pages 15-2 through 15-4.

[2] See 45C.F.R. 121a.300 and 45C.F.R. 84.33 (a).

[3] See 45C.F.R. 84.33 (b).

[4] 45C.F.R. 121a.13.

[5] State Bylaw 13.04.01.02B.

[6] Summaries of these interpretations are set out in Column 1 on pages 15-2 through 15-3.

[7] MCPS' documents are set out in Column 3 on pages 15-2 through 15-3.

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Related Services

FEDERAL	STATE	LOCAL
The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training (45C.F.R. 121a.13). HEW has issued numerous policy interpretations respecting an LEA's obligation to provide related services. These interpretations are summerized below. Medical Services - Part B of EHA funds may be used to pay salaries of doctors providing diagnostic and evaluation services to first and second priority children provided all other Part B of EHA provisions have been met and salaries were not previously paid by state and local funds (Letter from Tyrell to Kaye, February 21, 1978). Chiropractic Services - If chiropractic services are not considered medical services under state law and they are required to assist handicapped children to benefit from special education, it could be included as a related service and must be provided at no cost to the parents if listed in the IEP (Letter from Irvin to Haltom March 31, 1978). Psychotherapy - If psychotherapy is interpreted by the state as a medical service, i.e., administered by a licensed physician, the service is not required under Part B of EHA. However, some states interpret psychotherapy as "counseling services," which is included as a related service under the Act and therefore must be provided at no cost (Letter from Irvin to Minsky (April 7, 1978)). But see letter from BEH to Milligan (6/5/79) where BEH explained that it was still studing the issue. OCR has taken the position that psychotherapy is a related service (Letter to Connecticut Department of Education (10/17/79)).	Related services are transportation and those developmental, corrective, and other supportive services that are required to assist a handicapped child in benefitting from education. The term "related services" includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training (State Bylaw 13.04.01.02B).	Montogmery County Public Schools works closely with the Montgomery County Health Department. School health services, medical services, physical therapy, hearing, and vision screening are all provided. Psychological assessments and evaluations are conducted by MCPS psychologists and speech and language services are provided through the MCPS Division of Speech and Language (1979 LEA Application for Assistance Under Part B of EHA). The ACES document (page 39-40) adopts the definitions set out in the state bylaw for the term "related services."

Hearing Aids - Individually prescribed devices, e.g., glasses and hearing aids, are generally considered to be personal items which are not required to be provided under Part B (Id.).

Optometric Services - If optometric services are interpreted by state law as a medical service, they are not related services (see above under discussion of psychotherapy). (Letter from Irvin to Clark (August 2, 1978)).

Neurological Evaluation - If it is determined that a given handicapped child needs to be evaluated in a particular area, e.g., to receive a neurological examination, that evaluation must be carried out at no cost to the parents (Letter from Irvin to Minsky, April 7, 1978). If as a result of the medical evaluation, medical treatment is required, the medical treatment (provided by a physician) need not be provided by the LEA (Letter from Tyrrell to Triplett (January 20, 1978)).

Medical Diagnosis and Evaluation Performed by an Optometrist - Medical diagnositc and evaluation services required to assess a child in all areas of a suspected disability must be provided by qualified personnel. A person providing services to a handicapped child is qualified if he/she meets SEA approved or recognized certification, licensing, or other comparable requirements. Thus, the question of whether an optometrist rather than an ophthalmologist may perform vision tests is a question of state rather than federal law (Letter from Irvin to Jacobs (July 21, 1978)).

Catheterization - Since catheterization is typically provided by a nurse or trained adult and not by a physician, it is a "health service," which is one category of "related services" and must be provided by the LEA (Letter of Findings from Taylor August to North Kansas City, Missouri School District).

The new special education bylaw specifically delineates the role required of the ophthalmologist to perform a medical evaluation. Since such individuals are physicians, they, as well as other physicians, would be the only individuals qualified to perform medical evaluations. However, the optometrist does have a role and may be used as appropriate to provide evaluations in the cognitive sphere. Examples of these evaluations might include visual perception, measures of visual acuity, as well as pediatric optometry (memorandum from Linda Jacobs to local directors of special education September 8, 1978).

CHAPTER 16

SELF-EVALUATION

I. Overview of Legal Mandates[1]

To maximize the likelihood that recipients of federal financial assistance from DHEW will adopt nondiscriminatory policies and procedures, Section 504 requires that a comprehensive self-evaluation be undertaken.[2] Specifically, each recipient must:

A. Evaluate its current policies and their effects on handicapped persons

B. Modify any policies which are inconsistent with the 504 Regulation

C. Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adhering to the discriminatory policies

At each stage in the self-evaluation, the recipient must consult with interested persons, including handicapped persons or organizations representing handicapped persons. Recipients must maintain on file for at least three years a) a list of persons consulted, b) a description of areas examined, and c) a description of any modifications made and of any remedial action taken.

II. Analysis of MCPS Self-evaluation

In January, 1978, the MCPS superintendent appointed an advisory committee for the handicapped to conduct the self-evaluation required by Section 504. The self-evaluation was completed in July, 1978. The advisory committee included handicapped persons or organizations representing handicapped persons.

In general, the self-evaluation is consistent with the mandates set out in the 504 Regulation. MCPS' self-evaluation, consistent with 504, identifies several policies which have or may have discriminatory effects on handicapped persons. However, full compliance with the self-evaluation requirement requires that MCPS maintain records documenting that it has modified the discriminatory policies and, where necessary, taken appropriate remedial steps to remedy the results of the discrimination. Based solely on a review of the self-evaluation, it is impossible to determine whether necessary remedial steps have in fact been taken by MCPS.

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1. The federal mandates are set out in Column 1 on page 16-2.
2. 45C.F.R. 84.6 (c).

These charts have been excerpted from various documents and reflect the numbering and outlining used in those sources. In some cases minor editorial changes were made or sections paraphased from the sources.

Self-Evaluation

FEDERAL	STATE	LOCAL
Recipients of federal financial assistance from DHEW must: (1) Evaluate their current policies and practices to determine whether they have discriminatory effects on handicapped persons (2) Modify discriminatory policies and practices (3) Take remedial steps to eliminate the effects of the discrimination At each stage of the self-evaluation, the recipient must involve interested persons, including handicapped persons and organizations representing handicapped persons. Recipients must maintain on file for at least three years a) a list of persons consulted, b) a description of areas examined, and c) a description of any modifications or remedial action taken.		(MCPS's Self-evaluation was completed in July, 1978 and is on file.)

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215-1	Transportation of Pupils	September 12, 1979
250-1	Length of School Year	August 10, 1979
260-1	Public Information (MCPS Policy)	April 25, 1979
260-2	Public Information (State Law)	May 22, 1979
270-9	Community Involvement - Inquiries Complaints	November 3, 1972
270-10	Community Participation in Decision-Making at the Local School	June 21, 1974
275-4	Release of Information Concerning Pupils and Employees and Distribution of Rosters and Directories	August 20, 1975
325-1	Summer School Program - General	December 20, 1966
335-1	Referral of an MCPS Pupil to Pupil Services	January 21, 1977
335-2	Tutoring an MCPS Pupil	January 3, 1979
335-3	Psychological Testing	March 1, 1976

Montgomery County Public Schools. Administrative and Supervisory Regulations: (Continued)

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335-5	Placement and Hearing Procedures for Special Education Programs	December 2, 1974
340-3	Systemwide and Schoolbased Testing	September 11, 1979
355-3	Placement, Promotion, Retention, and Acceleration of Pupils	September 30, 1964
440-3	Establishing and Implementing an In-service Course For Teachers	July 17, 1979
440-7	Staff Development Programs for Supporting Services Employees	August 24, 1979
510-4	Referral and Selection of Pupils for Mark Twain School	August 30, 1971
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